



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY  
PLEASE  
REFER TO  
OUR FILE

ISSUED: January 31, 2007

A-310800 F0010  
A-311095 F0005  
A-311225 F0003

NORMAN J KENNARD ESQUIRE  
LILLIAN S HARRIS ESQUIRE  
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100 NORTH TENTH STREET  
HARRISBURG PA 17101

DOCUMENT  
FOLDER

Joint Application of Commonwealth Telephone Company, CTSI, LLC and CTE Telecom, LLC  
d/b/a Commonwealth Long Distance Company

TO WHOM IT MAY CONCERN:

Enclosed is a copy of the Recommended Decision of Administrative Law Judge Susan D. Colwell.

An original and nine (9) copies of signed exceptions to the decision, if any, **MUST BE FILED WITH THE SECRETARY OF THE COMMISSION, 2<sup>ND</sup> FLOOR, KEYSTONE BUILDING, 400 NORTH STREET, HARRISBURG, PA OR MAILED TO P.O. BOX 3265, HARRISBURG, PA 17105-3265**; a copy in the hands of the Office of Special Assistants Third Floor; and a copy in the hands of each party of record no later than February 7, 2007 by 4:30 P.M. 52 Pa. Code §1.56(b) cannot be used to extend the prescribed period for the filing of exceptions. A certificate of service shall be attached to the filed exceptions.

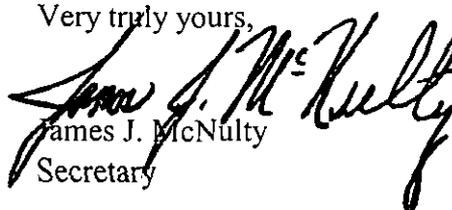
Exceptions shall obey 52 Pa. Code 5.533 and 5.535, particularly the 40-page limit for exceptions. Exceptions should be clearly labeled as "EXCEPTIONS OF (name of party) - (protestant, complainant, staff, etc.)".

Reply exceptions will not be accepted for filing and will not be entertained by the Commission.

Any reference to specific sections of the Administrative Law Judge's Recommended Decision shall include the page number(s) of the cited section of the decision.

Parties are also requested to provide the Commission's Office of Special Assistants with a copy of exceptions/reply exceptions on a computer disk, 3 1/2" in size, in Microsoft Word 6.0 format. If Word 6.0 is not available, either Wordperfect 5.1 or ASCII format is acceptable.

Very truly yours,

  
James J. McNulty  
Secretary

Encls.  
Certified Mail  
Receipt Requested  
MH

See attached list for additional parties of record.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Application of Commonwealth	:	
Telephone Company, CTSI, LLC, and CTE	:	A-310800F0010
Telecom, LLC d/b/a Commonwealth Long	:	A-311095F0005
Distance Company for All Approvals	:	A-311225F0003
Under the Public Utility Code for the	:	
Acquisition By Citizens Communications	:	
Company of All of the Stock of the	:	
Joint Applicants' Corporate Parent,	:	
Commonwealth Telephone Enterprises, Inc.	:	

**RECOMMENDED DECISION**

**DOCUMENT  
FOLDER**

Before  
Susan D. Colwell  
Administrative Law Judge

**DOCKETED**  
FEB 1 2007

HISTORY OF THE PROCEEDING

The purpose of this Recommended Decision is to recommend approval of the Settlement Agreement submitted by all remaining parties on all issues on January 19, 2007 for the reasons which are set forth in more detail below.

On September 29, 2006, Commonwealth Telephone Company, CTSI, LLC, and CTE Telecom, LLC d/b/a Commonwealth Long Distance (Commonwealth, CTCo, or Joint Applicants) filed an Application for approvals necessary under the Public Utility Code for the Joint Applicants' parent company, Commonwealth Telephone Enterprises, Inc., to be acquired by Citizens Communications Company (Application). The Application was published in the *Pennsylvania Bulletin* October 14, 2006, 36 Pa. B. 6355, with a protest due date of October 30, 2006.

On October 30, 2006, a Protest and Petition to Intervene was filed by each of the following: RCN Corporation and RCN Telecom Services, Inc. (RCN); Sprint Communications Company L.P. (Sprint); Blue Ridge Digital Phone Company (Blue Ridge); and, Broadband Cable Association of Pennsylvania (BCAP). A Protest and Preliminary Objections were filed by the Communications Workers of America (CWA), but the Preliminary Objections were withdrawn by letter dated November 13, 2006. A Protest and Public Statement was filed by both the Office of Small Business Advocate (OSBA) and the Office of Consumer Advocate (OCA), and a Notice of Appearance was filed on behalf of the Office of Trial Staff (OTS). Citizens Communications Company (Citizens) filed a Petition to Intervene.

On November 8, 2006, a Notice of Prehearing Conference was issued which set the prehearing conference for November 29, 2006 in Harrisburg.

On November 9, 2006, Joint Applicants filed an Answer to the Preliminary Objections of CWA.

On November 10, 2006, Joint Applicants filed Preliminary Objections to Dismiss Portions of the Protest and to Limit Participation of the CWA, and joined by Citizens, a separate set of Preliminary Objections to dismiss Protests and Petitions to Intervene of Blue Ridge, Sprint, BCAP and RCN.

On November 13, 2006, I issued a prehearing order which set forth some of the procedural requirements of a hearing before the Commission and required the parties to submit a prehearing memoranda in accordance with the regulations.

On November 20, 2006, CWA, Blue Ridge, Sprint, BCAP and RCN filed Answers to the Joint Applicants' Preliminary Objections.

On November 20, 2006, the Joint Applicants filed letters indicating that they did not oppose the participation of the OCA, OSBA and OTS.

All parties of record filed Prehearing Memos and the following were represented at the prehearing conference: for Joint Applicants, Norman J. Kennard, Esq.; for OSBA, Steven Gray, Esq., and Lauren Lepkoski, Esq.; for OCA, Shaun Sparks, Esq. and Joel Cheskis, Esq.; for OTS, Robert V. Eckenrod, Esq.; for Citizens, Lillian S. Harris, Esq.; for BCAP and Blue Ridge, Pamela Polacek, Esq.; for CWA, Scott J. Rubin, Esq.; for Sprint, Jennifer Duane, Esq., and for RCN, John F. Povilaitis, Esq., and Matthew A. Totino, Esq.

A series of Orders followed to dispose of procedural matters raised. By Order issued November 30, 2006, a litigation schedule was set for the parties to follow, and disposed of uncontested motions.

The *second Order*, issued December 14, 2006, disposed of the Preliminary Objections of the Joint Applicants to Limit Participation of the Communications Workers of America and affirmed the CWA's unlimited participation.

A third Order, also issued December 14, 2006, denied the Preliminary Objections of the Joint Applicants and Citizens to Dismiss Protests and Petitions to Intervene of Blue Ridge Digital Phone Company, Sprint Communications Company LP and RCN Telecom Services, Inc., thereby admitting them as parties.

An Initial Decision, issued December 14, 2006, granted the Preliminary Objections of the Joint Applicants to the Protests and Petitions to Intervene filed by the Broadband Cable Association of Pennsylvania (BCAP) and the RCN Corporation.

On January 3, 2007, BCAP filed Exceptions to the Initial Decision denying the interventions of BCAP and RCN Corporation. On January 4, 2007, the Initial Decision was served again, since the public advocates were not served when it was originally served on December 14, 2006.

A Protective Order was issued upon request of the parties on January 5, 2007.

No complaints were filed against the Joint Application. However, upon request of the OCA, a telephonic public input hearing was scheduled for January 30, 2007, and the OCA mailed notices to a list of persons who had previously expressed an interest in the Joint Applicants, along with directions to notify the OCA should they wish to testify at the public input hearing. By the date scheduled as the deadline, January 23, 2007, no person had signed up to testify, and by notice issued January 24, 2007, the public input hearing was canceled.

On January 9, 2007, Sprint filed a Motion for Leave to Withdraw its Petition to Intervene and Notice of Withdrawal of its Protest. On January 12, 2007, Blue Ridge filed a Petition for Leave to Withdraw its Petition to Intervene and Notice of Withdrawal of its Protest. On January 27, 2007, RCN Telecom filed a Petition for Leave to Withdraw its Petition to Intervene and Notice of Withdrawal of its Protest. Each request for leave to withdraw indicated that the objections had been satisfied. By conference call with the remaining parties on January 27, 2007, and in person for OTS, the remaining parties indicated that they had no objection to the withdrawal of the three parties. Accordingly, the withdrawals were granted in a separate Order issued January 26, 2007.

On January 19, 2007, the parties filed a Joint Petition for Approval of Unanimous Settlement Agreement, with Statements in Support filed by the CTC Co, Citizens, OCA, OSBA, CWA and OTS. In addition, Joint Applicants and Citizens filed a Motion to Admit Evidence, accompanied by two copies of the Exhibit No. 1, Statement 1.0 and Citizens' Statement 1.0, including two exhibits<sup>1</sup> with affidavits to support the statements. The Motion states that all parties agree to the procedure for admittance of the evidence and that no party opposes the admission of Joint Petitioners Exhibit No. 1, Statement 1.0 and Citizen's Statement 1.0. Motion, ¶ 13. Since the evidence is unopposed and is necessary to support the Settlement Agreement, the Motion has been granted and the evidence admitted by separate Order issued January 26, 2007. This Recommended Decision deals solely with the analysis of the Settlement Agreement.

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<sup>1</sup> Note that Citizens Exhibit No. DM-2 is marked as Highly Proprietary.

## FINDINGS OF FACT

1. Joint Applicants are Commonwealth Telephone Company, CTSI, LLC, and CTE Telecom, LLC d/b/a Commonwealth Long Distance Company.
2. On September 29, 2006, Commonwealth Telephone Company, CTSI, LLC, and CTE Telecom, LLC d/b/a Commonwealth Long Distance (Commonwealth or Joint Applicants) filed an Application for approvals necessary under the Public Utility Code for the Joint Applicants' parent company, Commonwealth Telephone Enterprises, Inc., to be acquired by Citizens Communications Company (Application).
3. The Application was published in the *Pennsylvania Bulletin* on October 14, 2006, 36 Pa. B. 6355, with a protest due date of October 30, 2006.
4. On October 30, 2006, a Protest and Petition to Intervene was filed by each of the following: RCN Corporation and RCN Telecom Services, Inc. (RCN); Sprint Communications Company L.P. (Sprint); Blue Ridge Digital Phone Company (Blue Ridge); and, Broadband Cable Association of Pennsylvania (BCAP).
5. At the time of this Recommended Decision, the remaining parties are Joint Applicants, Citizens, CWA, OSBA, the OCA, and OTS.
6. Evidence submitted to support the Settlement Agreement included the prepared testimony of Scott Burnside, Senior Vice President of Regulatory Affairs for Commonwealth Telephone Enterprises, Inc. (CTE), who is responsible for CTE's regulatory strategy and compliance requirements at the federal, state and local levels. Jt. Appl. Stmt. 1.0, p. 1.
7. On September 17, 2006, an Agreement and Plan of Merger ("Merger Agreement") was signed pursuant to which Citizens Communications Company "Citizens" will acquire the stock of CTE. Jt. Appl. Stmt. 1.0, p. 2.

8. CTE is a publicly traded Pennsylvania company which owns and controls all of the outstanding common stock of CTCo. In turn, CTCo owns and controls all of the outstanding common stock of CTSI and CLD. Pursuant to the Merger Agreement, the Joint Applicants' corporate parent, CTE, will become a wholly-owned, direct subsidiary of Citizens. Jt. Appl. Stmt. 1.0, p. 2.

9. The transaction represents a change in indirect ownership only. Ownership of the Applicants will continue to reside in the parent company, CTE. The regulated companies will retain the same subsidiary corporate relationships to CTE as they did prior to the proposed stock transfer. Jt. Appl. Stmt. 1.0, p. 2.

10. CTCo is a rural local exchange carrier incorporated in Pennsylvania, which provides local, vertical, regional long distance and broadband services over a network established in Berks, Bradford, Bucks, Carbon, Chester, Columbia, Dauphin, Lackawanna, Lancaster, Lehigh, Luzerne, Lycoming, Monroe, Northampton, Schuylkill, Sullivan, Susquehanna, Tioga, Wyoming, and York Counties, an approximately 5,000-square mile service territory. As of September 30, 2006, CTCo provided local exchange service to 312,376 access lines in seventy-nine telephone exchanges. CTCo hold Letters Patent and Certificates of Public Convenience to offer telephone service in Pennsylvania at Commission Docket Nos. A-9610, A-76155, A-80433, A-81356, A-82106, A-83156, A-85690, A-96978, A-96933, A-99981, A-00101891, A-00102711, and A-310800. CTCo is a "Rural Telecommunications Carrier" as defined in section 3 of the Telecommunications Act of 1996. Jt. Appl. Stmt. 1.0, p. 3.

11. CTSI, a competitive local exchange carrier ("CLEC") operating in the service territories of the Verizon Pennsylvania, Inc., Verizon North, Inc. and The United Telephone Company d/b/a Embarq Pennsylvania, is incorporated as a Pennsylvania corporation and is a full-service, facilities-based CLEC offering bundled local, long distance telephone, vertical services, DSL and Internet access. CTSI holds a Certificate of Public Convenience issued by the Commission at Docket No. A-311095. As of September 30, 2006, CTSI provided CLEC service to 138,806 access lines in 18 Pennsylvania counties. Jt. Appl. Stmt. 1.0, p. 4.

12. CLD, organized as CTE Telecom, LLC in the Commonwealth of Pennsylvania, provides long distance telephone service as a switched-based reseller in portions of Pennsylvania pursuant to a Certificate of Public Convenience issued by Commission Order entered on December 23, 2002 at Docket No. A-311225. Jt. Appl. Stmt. 1.0, p. 4.

13. CTCO is ahead of its Chapter 30 Network Modernization Plan (“NMP”). Approximately 90% of the households and business establishments in CTCO’s territory have broadband available. CTCO’s NMP requires that broadband be 80% available by the end of 2006, and 200% broadband availability by December 31, 2008. Jt. Appl. Stmt. 1.0, p. 5.

14. CTE and its affiliates, both regulated and unregulated, currently employ a total work force of approximately 1,130. Approximately 38% of these employees are covered under collective bargaining agreements. Jt. Appl. Stmt. 1.0, p. 6.

15. The market in which Joint Applicants operate is highly competitive and include other ILEC and CLEC companies, long-distance carriers and resellers, wireless telephone companies, Internet service providers, satellite companies and cable companies. CTSI, as a CLEC, competes directly against the ILEC companies Verizon and Embarq. CLD, operating in the long distance space, is in a low margin industry occupied by a multitude of interexchange carriers (“IXCs”). CTCO’s market is increasingly competitive, particularly from wireless and cable companies. Jt. Appl. Stmt. 1.0, p. 7.

16. CTCO is subject to the “rural exemption” granted by Congress under Section 251(f)(1) of the Telecommunications Act of 1996 (“TCA-96”). To date, no carrier has sought a review of that status by the Commission. Rural status does not preclude competitors from providing telephone services within CTCO’s service area entirely over their own facilities or over the facilities of third parties. Jt. Appl. Stmt. 1.0, p. 7.

17. Competition has been increasing exponentially in recent years, due to aggressive marketing of calling packages by wireless carriers and the entry of new types of voice

service providers. In addition to wireless carriers, CTCo faces competition from national ISPs such as Time Warner, from cable providers offering a cable modem product, and from providers of voice over Internet services that do not require access to CTCo's telephone network for their competitive offerings. Jt. Appl. Stmt. 1.0, p. 7.

18. In the face of increasing competition, CTCo must find ways to maintain profitability without rate relief since the price cap form of regulation has disconnected losses due to competition from the rate setting equation. Rather, price cap regulation puts the onus of efficiency and competition on management. Jt. Appl. Stmt. 1.0, p. 15.

19. The telecommunications industry is subject to rapid and significant changes in technology. If the Joint Applicants do not replace or upgrade technology and equipment that becomes obsolete, it will be unable to compete effectively as it will not be able to meet customers' needs or expectations. Jt. Appl. Stmt. 1.0, p. 16.

20. Improvements in the wireless industry reduce customer demand for service by the traditional landline companies and are likely to have a more marked effect in the future. Jt. Appl. Stmt. 1.0, p. 17.

21. Competition forces greater efficiency and consolidation, and other recent merger cases are indications of where the industry is heading. Jt. Appl. Stmt. 1.0, p. 18.

22. Citizens' Statement 1.0 is the direct testimony of Daniel McCarthy, Executive Vice President and Chief Operating Officer of Citizens Communications Company ("Citizens"). He is responsible for all of Citizens' regulatory strategy and compliance requirements at the federal, state, and local levels. Citizens Stmt. 1.0, p. 1.

23. Citizens is a publicly-traded Delaware company, full-service communications service provider and the seventh largest local exchange telephone company in the country. Under the Frontier Communications Solutions brand, Citizens offers telephone, television and internet services, as well as bundled offerings, ESPN360 streaming video, security

solutions and specialized bundles for residences, small businesses and home offices. Citizens Stmt. 1.0, p. 6.

24. Citizens provides services predominantly to small and medium-sized rural markets. It has grown to become a substantial presence in the rural local exchange carrier segment of the telecommunications market through the targeted acquisition of rural companies, and the successful integration of operations and support functions. Citizens Stmt. 1.0, p. 6.

25. Citizens is typically the incumbent carrier and provider of last resort in the markets it services and provides the “last mile” of telecommunications services to residential and business customers in these markets. Its revenues are principally driven by: local services, network access services, data and internet services, long distance services, directory services, and television services. It currently owns ILEC subsidiaries serving approximately 2.133 million telephone access lines in twenty-four states. Citizens Stmt. 1.0, p. 7.

26. In Pennsylvania, Citizens owns and operates five local exchange companies, the Frontier Companies, which provide local telecommunications service to approximately 38,700 access lines over a five-company area serving 949 square miles of service territory. Citizens Stmt. 1.0, p. 7.

27. The Frontier Companies have enjoyed steady improvements in their networks since being acquired by Rochester Telephone in the 1980s. Citizens Stmt. 1.0, p. 8.

28. The Frontier Companies are on track to meet their own NMP commitments. Citizens Stmt. 1.0, p. 9.

29. Citizens is financially suited to acquire CTE. Citizens Stmt. 1.0, p. 9.

30. Citizens has identified approximately \$30 million annually in redundant governance and shared services cost savings that it will realize within two years of the

transaction closing, including both wage and non-wage expenses. Combined, the companies have the potential to be stronger than they are individually. Citizens Stmt. 1.0, p. 11.

31. Citizens will honor the terms of all existing collective bargaining agreements between CTE Companies and the union and will honor CTE severance policies for a period of time. Citizens Stmt. 1.0, p. 11.

32. Location of facilities weighs in favor of the success of this transaction since there can be a concentration of lines from an operational efficiency perspective and from a customer service perspective. Citizens Stmt. 1.0, p. 14.

33. Increased competition in the industry has created challenges to ILECs like Citizens and CTCo that built and invested in telecommunications networks for years before competition, broadband, and VOIP were even considerations. Citizens Stmt. 1.0, p. 3.

34. Over the past 3 years, Citizens has lost 11.8% of its access lines company wide and Commonwealth has lost 7.7% of its access lines. Citizens Stmt. 1.0, p. 3.

35. Immediately following the enactment of the 1996 Telecommunications Act, the competition was primarily small start-up companies. Today, competition comes from the national wireless providers and established cable providers, each of which is subject to significantly less regulation and many of whom have resources far greater than the average ILEC. Citizens Stmt. 1.0, p. 4.

36. Wireless service is increasingly viewed more as a replacement for traditional wireline service rather than as an add-on. In addition, cable companies are competing directly with telephone companies and have the advantage of being able to limit ILEC access to advertising space on the cable systems. Citizens Stmt. 1.0, p. 4.

37. Citizens plans to provide services to CTE companies that are currently available to the Frontier Companies, including a voice, video and data combination. Citizens Stmt. 1.0, p. 18.

### TERMS OF THE SETTLEMENT AGREEMENT

The following section is taken directly from the Settlement Agreement, and includes only the substantive portions of the Agreement itself. The numbering duplicates the Settlement Agreement, starting on Paragraph 11.

### **SUBSTANCE OF THE SETTLEMENT**

11. The settlement process, fostered and encouraged by the Commission, is the art of compromise. The Parties agree that the proposed Settlement is in the best interest of the public and that the Transaction, as modified by this Settlement, meets the standards of the *City of York*. In consideration of the mutual promises and provisions contained in this Settlement Petition, Petitioners desire to conclude litigation of the above-docketed matters and to settle the contested issues, as follows:

12. **Transaction Approval by March 1, 2007.** The Transaction, as proposed in the Application and as modified by the terms of this Settlement Petition, must be approved without modification or change by the Commission in an Order adopted on or before the Commission's Public Meeting of March 1, 2007 with an Order entered shortly thereafter. Should the Commission not approve the Settlement Petition by March 1, 2007, CTCo and Citizens reserve the right to withdraw from the Petition.

13. **Post-Closing Conditions.** Upon closing of the Transaction, the following requirements will become operative. In the event of a failure to close the Transaction, then the items agreed to herein will terminate and be of no force or effect.

a. **Rate Caps/Freezes** – The exercise by CTCo and Citizens Communications Company’s five Pennsylvania-located Frontier ILECs<sup>2</sup> (CCC) of their price cap formula is restricted during the next three years (2007 (the current year), and the 2008 and 2009 filings following) as follows:

- i. 2007 – Increase in monthly charge for residential primary limited to \$.90 and for B-1 to \$.50.<sup>3</sup>
- ii. 2008 – Increase in monthly charge for residential primary limited to \$.50 and for B-1 to \$.25.
- iii. 2009 – No increases in residential primary or B-1 rates.

In no event, however, will R-1 rates for CTCo or any CCC company exceed \$18.00 during these periods. CTCo and CCC may request increases in non-access line rates. CTCo and CCC shall not be permitted to bank any rate increases which they forego in years 2007, 2008 and 2009. Notwithstanding any of the foregoing, CTCo and CCC may increase residential and business basic, unbundled local dial tone rates beyond these limitations as a result of generic federal and state required changes to access charges and/or universal service funding or an exogenous event as defined in CTCo’s and CCC’s Chapter 30 Plan.

b. **DSL** - CTCo and CCC agree to provide stand-alone<sup>4</sup> high speed internet service (DSL and ISP service) to their customers for a period of two years from the date of Commission approval of the Joint Application. Nothing in this Agreement shall restrict or limit CTCo’s and CCC’s pricing flexibility on DSL and DSL-related services.

c. **Bandwidth Availability** - CTCo agrees to provide bandwidth availability equal to or greater than 3 megabits per second in the downstream direction to a total of at least 88,000 lines within three years of closing of the Transaction.

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<sup>2</sup> The Citizens Communications Company Pennsylvania ILECs are comprised of the Frontier Communications Companies of: Breezewood, Canton, Lakewood, Oswayo River, and Pennsylvania.

<sup>3</sup> The companies will file rate changes consistent with this provision on February 1, 2007 (the timing required under their Chapter 30 plans) and bank any unused amount. Upon approval of this Settlement and closing of the Transaction, the companies will revise their banks in accordance with the provisions of this Settlement.

<sup>4</sup> Stand-alone high speed internet service is a service sold on a CTCo or CCC line without any requirement that such customer need purchase any other service.

d. **Lifeline** – CTCo and CCC will produce and distribute at their expense a Lifeline brochure explaining Lifeline and explaining how to apply for lifeline by telephone. The companies will provide these brochures to:

- i. Counties - County assistance offices and County agencies in their territories. The Companies will agree to provide those offices with sufficient brochures for a three year period following closing of the Transaction.
- ii. Local Assistance Agencies and Organizations, whether government affiliated or not, such as United Way and Meals on Wheels. Within 30 days of Commission approval of the Joint Application, the OCA, OSBA, OTS CTCo and Citizens will work to develop a list of local assistance agencies and organizations that should be supplied with these materials for the three year period following closing of the Transaction. .

e. **Employment** - CTCo and CCC will continue to employ the appropriate level of resources, including workforce, employee benefits, network and investment, necessary to achieve the continuation of quality service to their existing and prospective Pennsylvania customers while remaining competitive. CTCo shall maintain the level of CWA-represented positions<sup>5</sup> through the end of the current contract period (ending 11/30/08) at a minimum of 95% of the current level except for bona fide attrition.<sup>6</sup> As part of this job level guarantee, the CTCo call center shall remain open during this period. All terms of existing bargaining agreements will be honored.

f. **Service Quality Reporting** - CTCo and CCC will provide the following reports to the OCA, OSBA and OTS for calendar years 2006, 2007, and 2008. The OCA, OSBA and OTS agree that any information provided pursuant to this Paragraph will be treated in a confidential manner and agree not to use or release such information for any purpose. Nonetheless, if the OCA, OSBA or OTS believe that CTCo or CCC service quality has declined such that it is necessary to bring this data to the attention of the Commission,

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<sup>5</sup> Includes positions in the following categories: construction, central office, installation and repair, splicer, customer service representative, collections, repair dispatch, telesales and network operation center.

<sup>6</sup> Bona fide attrition means reduction in the size of the CWA-represented workforce due to a separation from employment that does not constitute a layoff and that results from one of the following: discharge for cause, voluntary resignation, retirement, or death. It shall not include employees leaving the payroll in response to any company-induced offer.

such party may file such data under protective restrictions and may seek to have it publicly disclosed pursuant to 52 Pa. Code §5.423. A party seeking to notify the Commission will attempt to resolve any service concerns with CTCO or CCC prior to taking any action at the Commission pursuant to this Paragraph.

1. Annually -- CTCO and CCC will report the service metrics stipulated below in the month of June following the calendar year reporting period.<sup>7</sup>

i. Trouble report rate (measured per 100 access lines);

ii. Number of missed appointments;

iii. Average interval (number of days) between a request for new basic service and installation. Metrics will be based on 52 Pa. Code § 63.58 rules regarding installation of service. CTCO and CCC will provide an annual average interval of days for installation of residential and single line business service and an annual average *interval of days for installation of non-primary service orders*.

iv. Copies of the annual reports filed with the Commission's Bureau of Consumer services.

2. As Required -- CTCO and CCC agree to advise the OCA and OSBA if either the CTCO or CCC service repair outage index falls below 80% restored/repaired within 24 hours for reasons not attributable to customer requests for a later time: (a) in any month across either the CTCO and CCC systems; and (b) for three consecutive months in any one CTCO district or CCC exchange.<sup>8</sup> In the event of a notification under this section, CTCO and CCC commit to meeting with the OCA and OSBA to discuss and address possible remedies or actions to be taken.

g. **Debt and Transaction Costs.** The Joint Applicants will not seek to recover in rates any costs of the Transaction, including any associated increase in debt costs. In addition, the Joint Applicants agree not to seek recovery of any costs resulting from implementing the stipulations set forth above. After closing and for a period of three (3) years following closing of the Transaction, CTCO shall not:

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<sup>7</sup> So, for example, the calendar year 2007 results will be included in a report due in June 2008.

<sup>8</sup> CTCO districts are identified in "Appendix A"

- i. Guarantee the debt or credit instruments of Citizens Communications Company or any affiliate not regulated by the Commission; or
- ii. Grant a mortgage or other lien or otherwise pledge as security for repayment of the principal or interest of any loan or credit instrument of Citizens Communications Company or any affiliate not regulated by the Commission any property used and useful in providing utility service to the public subject to the Commission's jurisdiction.

## DISCUSSION

### Legal Standard

The Commission may issue a certificate of public convenience upon a finding that “the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public. The commission, in granting such certificate, may impose such conditions as it may deem to be just and reasonable. . . .” 66 Pa. C.S. § 1103(a).

The Joint Applicants, as the primary proponents of the case itself, bear the burden of proving that they satisfy the requirements of the Public Utility Code, which requires that application must be made prior to the transfer of stock used or useful in the public service. 66 Pa. C.S. § 1102(a)(3).

The Commission's findings must be supported by substantial evidence. The term “substantial evidence” has been defined by Pennsylvania appellate courts as such relevant evidence that reasonable minds might accept as adequate to support a conclusion. More is required than a mere trace of evidence or suspicion of the existence of a fact sought to be established. *Norfolk and Western Ry. v. Pa. Public Utility Commission*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. Of Review*, 194 Pa. Super. 278, 166 A.2d 96 (1960); *Murphy v. Dept. of Public Welfare, White Haven Center*, 85 Pa. Commw. 23, 480 A.2d 382 (1984).

The leading case in interpreting these sections is *City of York v. Pa. Publ. Util. Comm'n*, 449 Pa. 136, 295 A.2d 825 (1972)(*York*), in which the Commission approved the merger of three telephone companies which had already been owned by the same holding company and the same person had been acting as president of all three companies. The *York* court found that the Public Utility Code “requires that the proponents of a merger demonstrate that the merger will affirmatively promote the “service, accommodation, convenience, or safety of the public” in some substantial way. *York*, 448 Pa. at 141, 295 A.2d at 828.

This standard has been interpreted to require the Commission to find that the transaction would “affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way.” *City of York v. Pa. Publ. Util. Comm'n*, 449 Pa. 136, 151, 295 A.2d 825, 828 (1972). “Further, when the ‘public interest’ is considered, it is contemplated that the benefits and detriments of the acquisition be measured as they impact on *all affected parties* and not merely on one particular group . . . .” *Middletown Township v. Pa. Publ. Util. Comm'n*, 482 A.2d 674, 682 (Pa. Cmwlth. 1984).

The “necessary or proper” standard usually requires a showing of inadequacy of existing service, public need, and fitness to provide service. *Seaboard Tank Lines, Inc. v. Pa. Pub. Util. Comm'n*, 502 A.2d 762 (Pa. Cmwlth. Ct. 1985). Where an existing utility operation exists, no demonstration of inadequacy is necessary, and a continuing public need is presumed. *Re Glenn Yeager, et al.*, 49 Pa. PUC 138 (1975). Citizens is a presently operating certificated entity which is presumed to be technically, financially and legally fit to provide the proposed service. *South Hills Movers, Inc. v. Pa. Publ. Util. Comm'n*, 601 A.2d 1308 (Pa. Cmwlth. Ct. 1992).

The Settlement Petition is consistent with Commission policy which encourages the parties to a proceeding to seek a negotiated settlement<sup>9</sup>. The parties signing the Settlement here are Citizens (the purchasing entity), OCA, OSBA, OTS, and CWA. The people represented by these parties are consumers, small businesses, the public interest at large, and the members of

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<sup>9</sup> “The Commission encourages parties to seek negotiated settlements of contested proceedings in lieu of incurring the time, expense and uncertainty of litigation. . . .” 52 Pa. Code § 69.391(a).

the CWA bargaining units who work for CTCo. The interests of each of these has been considered, and the representatives of each agree with the terms of the Settlement Agreement in its entirety.

### **Application of Law to the Facts**

Each of the terms of the Settlement is discussed in the following section. The first condition of Settlement is a deadline for the Commission, not the parties:

12. **Transaction Approval by March 1, 2007.** The Transaction, as proposed in the Application and as modified by the terms of this Settlement Petition, must be approved without modification or change by the Commission in an Order adopted on or before the Commission's Public Meeting of March 1, 2007 with an Order entered shortly thereafter. Should the Commission not approve the Settlement Petition by March 1, 2007, CTCo and Citizens reserve the right to withdraw from the Petition.

Joint Applicants and Citizens point out that they have made considerable concessions in order to obtain earlier approval of the transaction. CWA and the public advocates have sought and the companies have agreed to provide additional benefits in areas of concern to them, some of which may not have been available under a traditional analysis but were agreed to here, such as stand-alone high speed internet, greater bandwidth and lifeline services. These concessions were agreed to in order to obtain earlier approval of the transaction. Joint Applicants and Citizens believe that the six weeks between the filing of the Settlement Agreement and the Commission's final review is reasonable.

Although none of the other Statements in Support specifically discuss the timing condition, they all recommend approval of the Settlement Agreement and all of its terms. The timing condition is one of the terms.

The Commission is not bound by the timing condition of the Settlement Agreement, but circumstances permitted quick review of the Settlement Agreement and the usual

course of Commission procedure should place the Settlement Agreement before the Commission in time to be placed on the agenda for the public meeting of March 1, 2007.

13. **Post-Closing Conditions.** Upon closing of the Transaction, the following requirements will become operative. In the event of a failure to close the Transaction, then the items agreed to herein will terminate and be of no force or effect.

a. **Rate Caps/Freezes** – The exercise by CTCo and Citizens Communications Company’s five Pennsylvania-located Frontier ILECs<sup>10</sup> (CCC) of their price cap formula is restricted during the next three years (2007 (the current year), and the 2008 and 2009 filings following) as follows:

- i. 2007 – Increase in monthly charge for residential primary limited to \$.90 and for B-1 to \$.50.<sup>11</sup>
- ii. 2008 – Increase in monthly charge for residential primary limited to \$.50 and for B-1 to \$.25.
- iii. 2009 – No increases in residential primary or B-1 rates.

In no event, however, will R-1 rates for CTCo or any CCC company exceed \$18.00 during these periods. CTCo and CCC may request increases in non-access line rates. CTCo and CCC shall not be permitted to bank any rate increases which they forego in years 2007, 2008 and 2009. Notwithstanding any of the foregoing, CTCo and CCC may increase residential and business basic, unbundled local dial tone rates beyond these limitations as a result of generic federal and state required changes to access charges and/or universal service funding or an exogenous event as defined in CTCo’s and CCC’s Chapter 30 Plan.

This provision restricts dial tone line rate increases during the next three years; it provides for both CTCo and the Frontier Companies to adhere to the \$18.00 residential rate cap, and permits residential increases to exceed business rate increases. None of the revenues which are not realized can be banked. Jt. Appl. Stmt. In Support, p. 27. OTS calls this “a significant

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<sup>10</sup> The Citizens Communications Company Pennsylvania ILECs are comprised of the Frontier Communications Companies of: Breezewood, Canton, Lakewood, Oswayo River, and Pennsylvania.

<sup>11</sup> The companies will file rate changes consistent with this provision on February 1, 2007 (the timing required under their Chapter 30 plans) and bank any unused amount. Upon approval of this Settlement and closing of the Transaction, the companies will revise their banks in accordance with the provisions of this Settlement.

benefit to all affected residential and business customers within the Applicant's respective service territory and provides those customers with a level of rate savings that otherwise might not have been obtainable had this proceeding been fully litigated." OTS Stmt. In Support, pp. 3-4.

The OCA points out that these terms include the Citizens' companies, the Frontier Communications Companies of Breezewood, Canton, Lakewood, Oswayo River and Pennsylvania, which results in a significant benefit to all affected residential and business consumers. This Settlement Agreement provides for "sharply lower rate increases from those otherwise permitted over the next three years under the Joint Applicants' existing Chapter 30 plans. While this provision does allow for some limited exceptions, the OCA submits that a \$1.40 rate increase limitation over three years represents an affirmative benefit to the residential consumers affected by the proposed transaction. Moreover, the Settlement reinforces the overriding \$18.00 residential rate cap, so that for companies approaching the \$18.00 cap the maximum increase of \$1.40 will be further reduced." OCA Stmt. In Support, p. 6.

b. **DSL** - CTCo and CCC agree to provide stand-alone<sup>12</sup> high speed internet service (DSL and ISP service) to their customers for a period of two years from the date of Commission approval of the Joint Application. Nothing in this Agreement shall restrict or limit CTCo's and CCC's pricing flexibility on DSL and DSL-related services.

c. **Bandwidth Availability** - CTCo agrees to provide bandwidth availability equal to or greater than 3 megabits per second in the downstream direction to a total of at least 88,000 lines within three years of closing of the Transaction.

Joint Applicants point out that currently, a customer must purchase voice service and high speed Internet service at the same time. Under the Settlement, CTCo and the Frontier Companies agree to provide stand-alone high-speed Internet and ISP service to their customers for a period of two years. This should increase customer options of choosing among retail service providers. They point out that this is a federally deregulated service and in recognition of

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<sup>12</sup> Stand-alone high speed internet service is a service sold on a CTCo or CCC line without any requirement that such customer need purchase any other service.

that status, the companies retain pricing flexibility for the service. Jt. Appl. Stmt. In Support, p. 28.

OCA supports access to high-speed internet services in an unbundled fashion and states that this provides important access to competitive telecommunications services and to high-speed internet services. It is an affirmative benefit to the consumers that may be affected by the proposed transaction. OCA Stmt. In Support, p. 11. OSBA states that this two-year window for stand-alone DSL service may increase intermodal competition. OSBA Stmt. In Support, p. 3.

OTS points out that the network modernization issues represent roughly a doubling of the present number of lines to within the service territory to which the type of high speed service is available and represents a commitment well beyond the Chapter 30 obligations. “In addition, offering stand alone high speed internet will provide important access to competitive telecommunication and high-speed internet services to the Applicant’s customers that otherwise might not have been obtainable had this proceeding been fully litigated.” OTS Stmt. In Support, p. 4.

OCA reports that this provision addresses its concern that CTCo had made no commitment to provide enhanced access to advanced services beyond that contained in its Chapter 30 Plan. The Settlement Agreement represents a number which is nearly double the present number of lines to which this is available, and “extends well beyond CTCo Chapter 30 plan obligations. The OCA submits that this represents an affirmative benefit to the consumers that may be affected by the proposed transaction.” OCA Stmt. In Support, p. 6; see also Jt. Appl. Stmt. In Support, p. 27.

For the reasons stated by the Joint Applicants, OCA, OSBA and OTS, these conditions provide an affirmative benefit and weighs in favor of approving the Settlement Agreement.

d. **Lifeline** – CTCo and CCC will produce and distribute at their expense a Lifeline brochure explaining Lifeline

and explaining how to apply for lifeline by telephone. The companies will provide these brochures to:

- i. Counties - County assistance offices and County agencies in their territories. The Companies will agree to provide those offices with sufficient brochures for a three year period following closing of the Transaction.
- ii. Local Assistance Agencies and Organizations, whether government affiliated or not, such as United Way and Meals on Wheels. Within 30 days of Commission approval of the Joint Application, the OCA, OSBA, OTS CTCo and Citizens will work to develop a list of local assistance agencies and organizations that should be supplied with these materials for the three year period following closing of the Transaction.

Joint Applicants and Citizens agree that CTCo and the Frontier Companies will produce and distribute at their expense a Lifeline brochure explaining Lifeline and providing for telephonic application. OCA states that its concern that all qualified Pennsylvania telephone consumers, or those likely to be qualified consumers of regulated telecommunications services, should have access to lifeline programs. This part of the Settlement Agreement sets forth a consumer outreach program which provides the public advocates and the Joint Applicants and Citizens with the opportunity to pursue an aggressive lifeline outreach program in the CTCo and Citizens service territories. This represents an affirmative benefit to the citizens of the Commonwealth who may be affected by the transaction. OCA Stmt. In Support, pp. 10-11.

e. **Employment** - CTCo and CCC will continue to employ the appropriate level of resources, including workforce, employee benefits, network and investment, necessary to achieve the continuation of quality service to their existing and prospective Pennsylvania customers while remaining competitive. CTCo shall maintain the level of CWA-represented positions<sup>13</sup> through the end of the current contract period (ending 11/30/08) at a minimum of 95% of the current level except for bona fide attrition.<sup>14</sup> As part of this job level guarantee, the CTCo call center shall remain open

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<sup>13</sup> Includes positions in the following categories: construction, central office, installation and repair, splicer, customer service representative, collections, repair dispatch, telesales and network operation center.

<sup>14</sup> Bona fide attrition means reduction in the size of the CWA-represented workforce due to a separation from employment that does not constitute a layoff and that results from one of the following: discharge for cause, voluntary resignation, retirement, or death. It shall not include employees leaving the payroll in response to any company-induced offer.

during this period. All terms of existing bargaining agreements will be honored.

The Joint Applicants state openly that there are duplicative governance, managerial, and support positions that will not be retained under this horizontal merger, but in the Settlement Agreement, they state that CTCo and the Frontier Companies will maintain the necessary level of workforce to achieve the quality service to their existing and prospective Pennsylvania customers. Specifically, CTCo agrees to maintain at least 95% of the level of CWA-represented positions through the end of the current contract period, excepting for bona fide attrition. In particular, CTCo pledges that its customer call center will remain open during this period and will not be consolidated with the other Citizens' call centers. As expected, all terms of existing bargaining agreements will be honored. Jt. Appl. Stmt. In Support, p. 28.

CWA states that this provides a reasonable transition period during which Citizens can assess its future needs and negotiate any long-term changes with CWA at the time of the next collective bargaining agreement. CWA Stmt. In Support, p. 2.

OCA states that "these provisions work to provide a broad range of employee protections, particularly in regard to maintaining and developing the telephone network in the affected service territories. These provisions also work to assure customers affected by the proposed transaction that Citizens will attract and deploy a level of human resources commensurate with its obligation to provide safe and adequate service to all its Pennsylvania customers. The OCA submits that this represents an affirmative benefit to the consumers that may be affected by the proposed transaction." OCA Stmt. In Support, p. 8.

OTS submits that these provisions will ensure that employees and customers are ensured adequate employee protections and an on-going level of safe and adequate service to the public. OTS Stmt. In Support, p. 5. For the reasons stated by the parties, the employment protections as described provide an affirmative benefit to the Commonwealth and to the employees of the companies involved.

f. **Service Quality Reporting** - CTCo and CCC will provide the following reports to the OCA, OSBA and OTS for calendar years 2006, 2007, and 2008. The OCA, OSBA and OTS agree that any information provided pursuant to this Paragraph will be treated in a confidential manner and agree not to use or release such information for any purpose. Nonetheless, if the OCA, OSBA or OTS believe that CTCo or CCC service quality has declined such that it is necessary to bring this data to the attention of the Commission, such party may file such data under protective restrictions and may seek to have it publicly disclosed pursuant to 52 Pa. Code §5.423. A party seeking to notify the Commission will attempt to resolve any service concerns with CTCo or CCC prior to taking any action at the Commission pursuant to this Paragraph.

1. Annually -- CTCo and CCC will report the service metrics stipulated below in the month of June following the calendar year reporting period.<sup>15</sup>

i. Trouble report rate (measured per 100 access lines);

ii. Number of missed appointments;

iii. Average interval (number of days) between a request for new basic service and installation. Metrics will be based on 52 Pa. Code § 63.58 rules regarding installation of service. CTCo and CCC will provide an annual average interval of days for installation of residential and single line business service and an annual average interval of days for installation of non-primary service orders.

iv. Copies of the annual reports filed with the Commission's Bureau of Consumer services.

2. As Required -- CTCo and CCC agree to advise the OCA and OSBA if either the CTCo or CCC service repair outage index falls below 80% restored/repaired within 24 hours for reasons not attributable to customer requests for a later time: (a) in any month across either the CTCo and CCC systems; and (b) for three consecutive months in any one CTCo district or CCC exchange.<sup>16</sup> In the event of a notification under this section, CTCo and CCC commit to meeting with the OCA and OSBA to discuss and address possible remedies or actions to be taken.

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<sup>15</sup> So, for example, the calendar year 2007 results will be included in a report due in June 2008.

<sup>16</sup> CTCo districts are identified in "Appendix A"

OCA submits that these provisions: (1) work to provide a broad range of quality of service protections, particularly regarding CTCo's traditional level of network service; (2) are a proactive solution to the OCA's quality of service concerns; and (3) assure that the public advocates and Citizens will work together to address any quality of service issues that may arise. OCA Stmt. In Support, p. 10. *See also* CWA's Stmt. In Support, p. 2.

**g. Debt and Transaction Costs.** The Joint Applicants will not seek to recover in rates any costs of the Transaction, including any associated increase in debt costs. In addition, the Joint Applicants agree not to seek recovery of any costs resulting from implementing the stipulations set forth above. After closing and for a period of three (3) years following closing of the Transaction, CTCo shall not:

- i. Guarantee the debt or credit instruments of Citizens Communications Company or any affiliate not regulated by the Commission; or
- ii. Grant a mortgage or other lien or otherwise pledge as security for repayment of the principal or interest of any loan or credit instrument of Citizens Communications Company or any affiliate not regulated by the Commission any property used and useful in providing utility service to the public subject to the Commission's jurisdiction.

Joint Applicants have agreed not to seek rate recovery of any costs of the transaction, including recovery of any costs resulting from implementing the agreed-to stipulations. CTCo will not guarantee the debt or credit instruments of Citizens or any affiliate not regulated by the Commission or grant a mortgage or other lien or otherwise pledge used and useful property as security for repayment of the principal or interest of any loan or credit instrument of Citizens for a period of three years. Jt. Appl. Stmt. In Support, p. 29.

OTS states that, "OTS has been concerned with the ability of the resultant entities to pass along negative impacts of financial changes at the parent company level to Pennsylvania ratepayers. These conditions are set forth to isolate the local operating company from cost, financing and credit changes that may impact the parent company, thereby protecting consumers from any negative financial impacts of the proposed transaction." OTS Stmt. In Support, p. 5.

The OCA agrees, stating that “these provisions provide protections against negative consumer impacts of financial changes at the parent company level. These conditions do this by working to isolate the local operating company from cost, financing, and credit changes that may impact the parent company as a result of the proposed transaction. The OCA submits that this represents an affirmative benefit to the consumers that may be affected by the proposed transaction.” OCA Stmt. In Support, pp. 7-8.

The Settlement Petition meets the tests of Section 1102 and the *City of York*, supra. Citizens is already a known entity in Pennsylvania because of the Frontier Companies, which are also subsidiaries of Citizens and are certificated companies. The territories of the Joint Applicants and Citizens are close enough to provide opportunities for synergy savings following completion of the acquisition. The Agreement provides for the existing CTCO employees and will most likely enhance competition. All remaining parties are in favor of the settlement and have signed the Settlement Agreement. All have provided Statements in Support which spell out why the interests of the parties are well-served by the Settlement Agreement. For the reasons spelled out here and in greater detail in the Statements in Support, approval of this Settlement Agreement is recommended without reservation.

### III. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of this case. 66 Pa. C.S. §§1102(a)(3) and 1103(a).

2. The proposed acquisition by Citizens Communications Company of all stock of Commonwealth Telephone Enterprises, Inc., the corporate parent of Commonwealth Telephone Company CTSI, LLC and CTE Telecom, LLC d/b/a Commonwealth Long Distance Company, constitutes a transfer of a jurisdictional utility's tangible and intangible property used or useful in the public service. 66 Pa. C.S. §1102(a)(3); 52 Pa. Code §69.901.

3. The Commission will grant a certificate of public convenience upon a finding that “the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public.” 66 Pa. C.S. § 1103(a).

4. The Pennsylvania Supreme Court has held that the Commission must find that the transaction will affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way. *City of York v. Pa. Public Utility Commission*, 449 Pa. 136, 141, 295 A.2d 825, 828 (1972).

5. Section 1103(a) of the Pennsylvania Public Utility Code provides that the Commission in granting a certificate of public convenience “may impose such conditions as it deems just and reasonable.” 66 Pa.C.S. § 1103(a). *See also*, 66 Pa.C.S. § 3019(b)(4).

6. The proponent of a rule or order carries the burden of proof. 66 Pa. C.S. §332(a).

7. Joint Applicants met their burden of proof in that Joint Applicants have demonstrated that, by a preponderance of the evidence, the transfer of ownership of Commonwealth Telephone Enterprises, Inc., as set forth in the Settlement Agreement is in the public interest.

8. Substantial evidence of record exists demonstrating that the Settlement Agreement is in the public interest.

9. Joint Applicants met their burden of proof in that Joint Applicants have demonstrated, by a preponderance of the evidence, that the transaction as proposed in the Joint Application and the Settlement Agreement will affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way.

10. Substantial evidence of record exists demonstrating that the Joint Application and the Settlement Agreement will affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way.

#### IV. ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That The Joint Application of Commonwealth Telephone Company CTSI, LLC and CTE Telecom, LLC d/b/a Commonwealth Long Distance Company For All Approvals Under the Public utility Code for the Acquisition By Citizens Communications Company of All of the Stock of the Joint Applicants' Corporate Parent, Commonwealth Telephone Enterprises, Inc., filed with the Pennsylvania Public Utility Commission on September 29, 2006, be approved consistent with the terms of the Settlement Agreement submitted in this case.

2. That the Settlement entered between Joint Applicants and the Office of Consumer Advocate, the Office of Small Business Advocate, and the Office of Trial Staff, the Communications Workers of America, and Citizens Communications Company, as filed with the Pennsylvania Public Utility Commission on January 19, 2007, be approved.

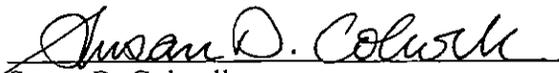
3. That a certificate of public convenience be issued evidencing the Pennsylvania Public Utility Commission's approval of the Settlement Agreement in this matter.

4. That the Secretary maintain under seal for 18 months from the date of this Opinion and Order, Citizens Exhibit No. DM-2, which is currently under seal in this proceeding.

5. That this Order shall remain in full force and effect until further Order of the Commission.

6. That the Secretary mark these dockets closed.

Dated: January 30, 2007

  
Susan D. Colwell  
Administrative Law Judge

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

In re Joint Application of	:	
	:	
Commonwealth Telephone Company	:	A-310800F0010
CTSI, LLC, and	:	A-311095F0005
CTE Telecom, LLC d/b/a Commonwealth	:	A-311225F0003
Long Distance Company	:	
	:	
For All Approvals Under The Public Utility	:	
Code for the Acquisition By Citizens	:	
Communications Company of All of the Stock	:	
of the Joint Applicants' Corporate Parent,	:	
Commonwealth Telephone Enterprises, Inc.	:	

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**JOINT PETITION FOR APPROVAL OF  
UNANIMOUS SETTLEMENT AGREEMENT**

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AND NOW, this 19th day of January 2007, comes Commonwealth Telephone Company (“CTCo”), CTSI, LLC (“CTSI”), and CTE Telecom, LLC d/b/a Commonwealth Long Distance Company (“CLD”), (hereinafter collectively referred to as the “Applicants” or “Joint Applicants”), Citizens Communications Company (“Citizens”), the Communications Workers of America (“CWA”), the Office of Consumer Advocate (“OCA”), the Office of Small Business Advocate (“OSBA”) and the Office of Trial Staff (“OTS”) (collectively “Parties” or “Petitioners”), these being all of the parties to this proceeding, and jointly submit this Settlement Petition to the Pennsylvania Public Utility Commission (“Commission”) for its approval as being in the public interest:

## BACKGROUND

1. On September 17, 2006, an Agreement and Plan of Merger (“Merger Agreement”) was signed pursuant to which Citizens will acquire the stock of Commonwealth Telephone Enterprises, Inc. (“CTE”) and, indirectly, the stock of Applicants. CTE owns and controls all of the outstanding common stock of CTCo. In turn, CTCo owns and controls all of the stock of CTSI and CLD. That is, pursuant to the Merger Agreement, the Joint Applicants’ corporate parent, CTE, will become a wholly-owned, direct subsidiary of Citizens and the Joint Applicants will become indirect subsidiaries of Citizens.

2. The Joint Applicants filed an Application requesting the issuance of a certificate of public convenience on September 29, 2006 approving the transaction as described therein (the “Transaction”).<sup>1</sup>

3. The Commission published notice of the Joint Application by the CTE Companies in the *Pennsylvania Bulletin* on October 14, 2006 (36 Pa. B. 6355), which required protests and petitions to intervene to be filed on or before October 30, 2006.

4. The CWA, OCA, OSBA and OTS are the remaining protesting parties to this case. The CWA filed a protest on October 27, 2006. The OCA and OSBA filed protests on October 30, 2006. The OTS filed an Entry of Appearance on November 2, 2006.<sup>2</sup>

5. Blue Ridge Digital Phone Company (“Blue Ridge”), Sprint Communications Company LP (“Sprint”), and RCN Corporation and RCN Telecom

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<sup>1</sup> Commission approval is required under a Policy Statement applying the certification requirements of 66 Pa.C.S. §1102(a)(3) where a stock transaction or series of stock transactions results in a change of control of a public utility regardless of ownership tier.

<sup>2</sup> Citizens also filed a Petition to Intervene on October 30, 2006.

Services, Inc. (“RCN”) (collectively “CLECs”) had previously filed protests to the Joint Application and been accepted into the proceeding.<sup>3</sup> These CLEC protests were subsequently settled and the protests withdrawn.<sup>4</sup> The Joint Applicants have satisfied any competitive concerns associated with the Transaction.

6. In support of the Joint Application, the Joint Applicants and Citizens distributed Direct Testimony to the parties on November 10, 2006.

7. A prehearing conference was held on November 29, 2006 at which a procedural schedule was established. ALJ Colwell entered a Scheduling Order dated November 30, 2006.

8. In developing their testimony and preparing for hearings, the parties *propounded extensive discovery on the Joint Applicants and Citizens, including data requests, interrogatories and requests for the production of documents.*

#### **UNANIMOUS SETTLEMENT OF ALL PARTIES**

9. The Parties thereafter held several meetings to discuss potential settlement of this proceeding, consistent with the Commission’s Rules of Practice and Procedure, 52 Pa. Code § 5.231. As explained more fully below, the result of these efforts is that the Parties have reached a full, complete, and comprehensive settlement of all issues.

10. This is a unanimous settlement as it encompasses all remaining parties to this case. The CWA, OCA, OSBA and OTS are the remaining protesting participants in this case. As noted previously, the CLECs in this case, Blue Ridge, Sprint, and RCN,

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<sup>3</sup> Broadband Cable Association of Pennsylvania filed a protest, but it was dismissed as legally insufficient.

<sup>4</sup> Sprint filed a Motion to Withdraw its Petition on January 9, 2007. Blue Ridge filed a Petition for Leave to Withdraw on January 12, 2007. RCN filed a Motion to Withdraw on January 17, 2007.

have separately settled and withdrawn their Protests. Therefore, this is an “all parties” Settlement Petition, encompassing all issues in the case.

## **SUBSTANCE OF THE SETTLEMENT**

11. The settlement process, fostered and encouraged by the Commission, is the art of compromise. The Parties agree that the proposed Settlement is in the best interest of the public and that the Transaction, as modified by this Settlement, meets the standards of the *City of York*. In consideration of the mutual promises and provisions contained in this Settlement Petition, Petitioners desire to conclude litigation of the above-docketed matters and to settle the contested issues, as follows:

12. **Transaction Approval by March 1, 2007.** The Transaction, as proposed in the Application and as modified by the terms of this Settlement Petition, must be approved without modification or change by the Commission in an Order adopted on or before the Commission’s Public Meeting of March 1, 2007 with an Order entered shortly thereafter. Should the Commission not approve the Settlement Petition by March 1, 2007, CTCo and Citizens reserve the right to withdraw from the Petition.

13. **Post-Closing Conditions.** Upon closing of the Transaction, the following requirements will become operative. In the event of a failure to close the Transaction, then the items agreed to herein will terminate and be of no force or effect.

a. **Rate Caps/Freezes** – The exercise by CTCo and Citizens Communications Company’s five Pennsylvania-located Frontier ILECs<sup>5</sup> (CCC) of

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<sup>5</sup> The Citizens Communications Company Pennsylvania ILECs are comprised of the Frontier Communications Companies of: Breezewood, Canton, Lakewood, Oswayo River, and Pennsylvania.

their price cap formula is restricted during the next three years (2007 (the current year), and the 2008 and 2009 filings following) as follows:

- i. 2007 – Increase in monthly charge for residential primary limited to \$.90 and for B-1 to \$.50.<sup>6</sup>
- ii. 2008 – Increase in monthly charge for residential primary limited to \$.50 and for B-1 to \$.25.
- iii. 2009 – No increases in residential primary or B-1 rates.

In no event, however, will R-1 rates for CTCo or any CCC company exceed \$18.00 during these periods. CTCo and CCC may request increases in non-access line rates. CTCo and CCC shall not be permitted to bank any rate increases which they forego in years 2007, 2008 and 2009. Notwithstanding any of the foregoing, CTCo and CCC may increase residential and business basic, unbundled local dial tone rates beyond these limitations as a result of generic federal and state required changes to access charges and/or universal service funding or an exogenous event as defined in CTCo's and CCC's Chapter 30 Plan.

b. **DSL** - CTCo and CCC agree to provide stand-alone<sup>7</sup> high speed internet service (DSL and ISP service) to their customers for a period of two years from the date of Commission approval of the Joint Application. Nothing in this Agreement shall restrict or limit CTCo's and CCC's pricing flexibility on DSL and DSL-related services.

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<sup>6</sup> The companies will file rate changes consistent with this provision on February 1, 2007 (the timing required under their Chapter 30 plans) and bank any unused amount. Upon approval of this Settlement and closing of the Transaction, the companies will revise their banks in accordance with the provisions of this Settlement.

<sup>7</sup> Stand-alone high speed internet service is a service sold on a CTCo or CCC line without any requirement that such customer need purchase any other service.

c. **Bandwidth Availability** - CTCo agrees to provide bandwidth availability equal to or greater than 3 megabits per second in the downstream direction to a total of at least 88,000 lines within three years of closing of the Transaction.

d. **Lifeline** – CTCo and CCC will produce and distribute at their expense a Lifeline brochure explaining Lifeline and explaining how to apply for lifeline by telephone. The companies will provide these brochures to:

i. **Counties** - County assistance offices and County agencies in their territories. The Companies will agree to provide those offices with sufficient brochures for a three year period following closing of the Transaction.

ii. **Local Assistance Agencies and Organizations**, whether government affiliated or not, such as United Way and Meals on Wheels. Within 30 days of Commission approval of the Joint Application, the OCA, OSBA, OTS CTCo and Citizens will work to develop a list of local assistance agencies and organizations that should be supplied with these materials for the three year period following closing of the Transaction. .

e. **Employment** - CTCo and CCC will continue to employ the appropriate level of resources, including workforce, employee benefits, network and investment, necessary to achieve the continuation of quality service to their existing and prospective Pennsylvania customers while remaining competitive. CTCo shall

maintain the level of CWA-represented positions<sup>8</sup> through the end of the current contract period (ending 11/30/08) at a minimum of 95% of the current level except for bona fide attrition.<sup>9</sup> As part of this job level guarantee, the CTCo call center shall remain open during this period. All terms of existing bargaining agreements will be honored.

f. **Service Quality Reporting** - CTCo and CCC will provide the following reports to the OCA, OSBA and OTS for calendar years 2006, 2007, and 2008. The OCA, OSBA and OTS agree that any information provided pursuant to this Paragraph will be treated in a confidential manner and agree not to use or release such information for any purpose. Nonetheless, if the OCA, OSBA or OTS believe that CTCo or CCC service quality has declined such that it is necessary to bring this data to the attention of the Commission, such party may file such data under protective restrictions and may seek to have it publicly disclosed pursuant to 52 Pa. Code §5.423. A party seeking to notify the Commission will attempt to resolve any service concerns with CTCo or CCC prior to taking any action at the Commission pursuant to this Paragraph.

1. Annually -- CTCo and CCC will report the service metrics stipulated below in the month of June following the calendar year reporting period.<sup>10</sup>

i. Trouble report rate (measured per 100 access lines);

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<sup>8</sup> Includes positions in the following categories: construction, central office, installation and repair, splicer, customer service representative, collections, repair dispatch, telesales and network operation center.

<sup>9</sup> Bona fide attrition means reduction in the size of the CWA-represented workforce due to a separation from employment that does not constitute a layoff and that results from one of the following: discharge for cause, voluntary resignation, retirement, or death. It shall not include employees leaving the payroll in response to any company-induced offer.

<sup>10</sup> So, for example, the calendar year 2007 results will be included in a report due in June 2008.

- ii. Number of missed appointments;
- iii. Average interval (number of days) between a request for new basic service and installation. Metrics will be based on 52 Pa. Code § 63.58 rules regarding installation of service. CTCo and CCC will provide an annual average interval of days for installation of residential and single line business service and an annual average interval of days for installation of non-primary service orders.
- iv. Copies of the annual reports filed with the Commission's Bureau of Consumer services.

2. As Required -- CTCo and CCC agree to advise the OCA and OSBA if either the CTCo or CCC service repair outage index falls below 80% restored/repared within 24 hours for reasons not attributable to customer requests for a later time: (a) in any month across either the CTCo and CCC systems; and (b) for three consecutive months in any one CTCo district or CCC exchange.<sup>11</sup> In the event of a notification under this section, CTCo and CCC commit to meeting with the OCA and OSBA to discuss and address possible remedies or actions to be taken.

g. **Debt and Transaction Costs.** The Joint Applicants will not seek to recover in rates any costs of the Transaction, including any associated increase in debt costs. In addition, the Joint Applicants agree not to seek recovery of any costs resulting from implementing the stipulations set forth above. After closing and for a period of three (3) years following closing of the Transaction, CTCo shall not:

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<sup>11</sup> CTCo districts are identified in "Appendix A"

- iii. Guarantee the debt or credit instruments of Citizens Communications Company or any affiliate not regulated by the Commission; or
- iv. Grant a mortgage or other lien or otherwise pledge as security for repayment of the principal or interest of any loan or credit instrument of Citizens Communications Company or any affiliate not regulated by the Commission any property used and useful in providing utility service to the public subject to the Commission's jurisdiction.

### **OTHER ASPECTS OF THE SETTLEMENT**

14. If Administrative Law Judge Colwell recommends approval of this Petition without modification, the Parties waive the filing of Exceptions and, in such event, request that the Commission's Secretary not provide an exception period prior to Commission consideration pursuant to 52 Pa. Code § 5.232(e).

15. This Settlement Petition is conditioned upon, and subject to, acceptance and adoption by the Commission. If this Settlement Petition or any part thereof is for any reason modified in any respect by the Commission, any Party may withdraw from this Petition in which case the Settlement shall be of no force or effect. If any Party withdraws from this Petition, it must do so in a written document, filed with the Commission and served upon the Parties within five (5) business days after the entry of the Order modifying the proposed Settlement. If the Petition is disapproved, or if any Party withdraws from the Petition following modification thereof by the Commission, the above-captioned proceeding will continue with litigation on the Joint Application as originally filed.

16. This Settlement is proposed by the Parties to settle the litigation involved in the instant proceeding, and is made without any admission against or prejudice to any positions which any Party might adopt during subsequent litigation, including further litigation in this case, if the Settlement is rejected by the Commission or if any of the Parties withdraw from the Settlement as provided herein above. No prejudice is intended to the positions of the Parties as a result of the Commission's approval of this Settlement except to the extent necessary to implement the terms of the Settlement.

17. Upon the acceptance and adoption by the Commission of this Settlement Petition without modification, the Protests of the CWA, OCA, OSBA and OTS shall be deemed satisfied and closed.

18. The Statements in Support of Settlement of the Joint Applicants and Citizens ("B"), CWA ("C"), OCA ("D"), OSBA ("E"), and OTS ("F"), setting forth the bases upon which they believe that the Settlement promotes the public interest shall be filed in this docket no later than Monday, January 22, 2007.

19. This Settlement Petition may be signed in counterparts.

WHEREFORE, Commonwealth Telephone Company, CTSI, LLC, CTE Telecom, LLC d/b/a Commonwealth Long Distance Company, Citizens Communications Company, the Communications Workers of America, the Office of Consumer Advocate, the Office of Small Business Advocate and the Office of Trial Staff request the Commission issue an Order approving the above-captioned Application, granting the

requested Certificate of Public Convenience and incorporating the above-stated terms of this Settlement Petition.

Respectfully submitted,

January 19, 2007

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Commonwealth Telephone Company, CTSI, LLC and CTE  
Telecom, LLC d/b/a Commonwealth Long Distance  
Company by their attorney  
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January 19, 2007

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January 19, 2007

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Office of Consumer Advocate by its attorney  
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January 19, 2007

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January 19, 2007

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Office of Trial Staff by its attorney  
Robert V. Eckenrod  
Office of Trial Staff  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

In re Joint Application of	:	
	:	
Commonwealth Telephone Company	:	A-310800F0010
CTSI, LLC, and	:	A-311095F0005
CTE Telecom, LLC d/b/a Commonwealth	:	A-311225F0003
Long Distance Company	:	
	:	
For All Approvals Under The Public Utility	:	
Code for the Acquisition By Citizens	:	
Communications Company of All of the Stock	:	
of the Joint Applicants' Corporate Parent,	:	
Commonwealth Telephone Enterprises, Inc.	:	

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**STATEMENT OF COMMONWEALTH TELEPHONE  
COMPANY, CTSI, LLC, AND CTE TELECOM, LLC d/b/a  
COMMONWEALTH LONG DISTANCE COMPANY AND  
CITIZENS COMMUNICATIONS COMPANY IN SUPPORT OF  
JOINT PETITION FOR APPROVAL OF UNANIMOUS  
SETTLEMENT AGREEMENT**

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Commonwealth Telephone Company (“CTCo”), CTSI, LLC (“CTSI”), and CTE Telecom, LLC d/b/a Commonwealth Long Distance Company (“CLD”), (hereinafter collectively referred to as the “Applicants” or “Joint Applicants”) and Citizens Communications Company (“Citizens”) jointly file this Statement In Support of the “Joint Petition For Approval Of Unanimous Settlement Agreement.”

**PROCEDURAL BACKGROUND**

On September 17, 2006, an Agreement and Plan of Merger (“Merger Agreement”) was signed pursuant to which Citizens will acquire the stock of Commonwealth Telephone

Enterprises, Inc. (“CTE”) and, indirectly, the stock of the Joint Applicants. That is, pursuant to the Merger Agreement, the Joint Applicants’ corporate parent, CTE, will become a wholly-owned, direct subsidiary of Citizens.

CTCo, CTSI and CLD filed this Application requesting the issuance of a certificate of public convenience on September 29, 2006. Approval is required under a Commission Policy Statement applying the certification requirements of 66 Pa. C.S. §1102(a)(3) where a stock transaction or series of stock transactions results in a change of control of a public utility regardless of ownership tier.

The Commission published notice of the Joint Application by the CTE Companies in the *Pennsylvania Bulletin* on October 14, 2006 (36 Pa. B. 6355), which required protests and petitions to intervene to be filed on or before October 30, 2006.

The Office of Consumer Advocate (“OCA”) and the Office of Small Business Advocate (“OSBA”) filed protests on October 30, 2006. The Office of Trial Staff (“OTS”) filed an Entry of Appearance on November 2, 2006. The Communications Workers of America (“CWA”), Blue Ridge Digital Phone Company (“Blue Ridge”), Sprint Communications Company LP (“Sprint”), the Broadband Cable Association of Pennsylvania (“BCAP”) and RCN Corporation and RCN Telecom Services, Inc. (“RCN”) filed protests and/or interventions to the Joint Application. Citizens also filed a Petition to Intervene on October 30, 2006.

In support of the Application, the Joint Applicants and Citizens distributed the Direct Testimonies of: Scott Burnside, Senior Vice President of Regulatory Affairs for Commonwealth Telephone Enterprises, Inc.; and Daniel McCarthy, Executive Vice President and Chief Operating Officer of Citizens Communications Company to the parties on November 10, 2006.<sup>1</sup>

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<sup>1</sup> By separate motion filed along with the Settlement Petition, the Joint Applicants and Citizens have requested that Messrs. Burnside and McCarthy’s testimony be marked and admitted as Joint Petitioners’ St. 1.0 and Citizens’ St.

Also on November 10, 2006, the Joint Applicants and Citizens filed *Joint Answers and Preliminary Objections* addressed to the Protests and Petitions to Intervene of Blue Ridge Digital Phone Company, Sprint Communications Company L.P., the Broadband Cable Association of Pennsylvania, RCN Corporation, and RCN Telecom Services, Inc (“CLECs”). Answers were filed by the CLECs on November 20, 2006. The Joint Applicants and Citizens also filed Preliminary Objections seeking to limit the participation of CWA to employment-related issues. An answer was filed by CWA on November 20, 2006. On November 20, 2006, the Joint Applicants submitted a letter stating that they did not oppose the participation of the OCA, OSBA and OTS.

On November 13, 2006, ALJ Colwell issued a Prehearing Conference Order, which reviewed various procedural issues related to this proceeding and asked that each party distribute, at least three business days prior to the prehearing conference, a prehearing memorandum.

On November 21, 2006 a Motion was submitted to admit Jennifer Duane, counsel for Sprint Communications Company, L.P., *pro hac vice*.

A Scheduling Order was issued by Judge Colwell on November 30, 2006 setting the dates for the submission of testimony, hearings and submittal of briefs.

ALJ Colwell issued an Initial Decision, along with accompanying Orders on December 14, 2006,<sup>2</sup> disposing of the Joint Applicants’ Preliminary Objections. The Initial Decision and Orders dismissed the protests of RCN Corporation (RCN’s parent company) and the Broadband Cable Association but denied the Preliminary Objections as they related to the CWA and the remaining CLECs, Sprint, RCN (the operating company) and Blue Ridge.

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1.0, respectively. Further, the Application filed September 29, 2006 is introduced as Joint Petitioners’ Exhibit 1. No party opposes that motion.

<sup>2</sup> Due to an administrative error, the Initial Decision was reissued and re-served on January 4, 2007.

On December 21, 2006 the Joint Applicants and Citizens filed a Motion for a Protective Order, to which RCN Telecom Services, Inc. filed an Answer on December 22, 2006. The Joint Applicants filed a response to RCN Telecom Services, Inc.'s Answer on December 29, 2006.

On January 3, 2007, a motion was submitted to admit Michael W. Fleming, counsel for RCN Telecom Services, Inc., *pro hac vice*.

Judge Colwell issued an Order granting the requested Protective Order on January 4, 2007.

The protests of the two cable companies and a third filed by a cable wholesale service provider have been settled. On January 9, 2007, Sprint Communications Company, L.P. moved for leave to withdraw its Petition to Intervene and gave notice of the withdrawal of its protest. On January 12, 2007, Blue Ridge Digital Phone Company submitted a Petition for Leave to Withdraw its Intervention and gave notice of the withdrawal of its protest. RCN Telecom Services, Inc. similarly submitted a Petition for Leave to Withdraw its Intervention and gave notice of the withdrawal of its protest on January 17, 2007.

On January 19, 2007, a unanimous settlement of all remaining parties was submitted for Your Honor's and the Commission's approval.

## COMMONWEALTH TELEPHONE, CITIZENS COMMUNICATIONS AND THE TRANSACTION

### Commonwealth Telephone Enterprises, Inc. and Joint Applicants

Commonwealth Telephone Enterprises, Inc. (“CTE”) is a publicly traded Pennsylvania company (NASDAQ: CTCO), which owns and controls all of the outstanding common stock of CTCo. In turn, CTCo owns and controls all of the outstanding common stock of CTSI and CLD, all three of which are regulated telecommunications companies. Joint Petitioners’ Exh. No. 1 at 2 and St. 1.0.

CTCo is a rural local exchange carrier incorporated in Pennsylvania, which provides local, vertical and regional long distance as well as broadband services over a network established in Berks, Bradford, Bucks, Carbon, Chester, Columbia, Dauphin, Lackawanna, Lancaster, Lehigh, Luzerne, Lycoming, Monroe, Northampton, Schuylkill, Sullivan, Susquehanna, Tioga, Wyoming, and York Counties, an approximately 5,000-square mile service territory. As of September 30, 2006, CTCo provided local exchange service to 312,376 access lines in 79 telephone exchanges. CTCo holds Letters Patent and Certificates of Public Convenience to offer telephone service in Pennsylvania at Commission Docket Nos. A-9610, A-76155, A-80433, A-81356, A-82106, A-83156, A-85690, A-96978, A-96933, A-99981, A-00101891, A-00102711, and A-310800. CTCo is a “Rural Telecommunications Carrier” as defined in Section 3 of the Telecommunications Act of 1996 (Public Law 104-104, 110 Stat. 56) which this Commission has recognized in its Orders entered at Docket No. M-00960799,<sup>3</sup> and for the purposes of Act 183, 66 Pa. C.S. §3011 *et seq.*<sup>4</sup> Joint Petitioners’ Exh. No. 1 at 5.

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<sup>3</sup> *Re: Implementation of the Telecommunication Act of 1996*, Docket No. M-00960799; Orders entered June 3, 1996 and September 9, 1996.

<sup>4</sup> See, CTCo Chapter 30 Plan at 1.

CTSI, a competitive local exchange carrier (“CLEC”) operating in the service territories of Verizon Pennsylvania, Inc., Verizon North, Inc. and The United Telephone Company d/b/a Embarq Pennsylvania, is incorporated as a Pennsylvania corporation and is a full-service, facilities-based CLEC offering bundled local and long distance telephone services, vertical services, and Internet access. CTSI holds a Certificate of Public Convenience issued by this Commission at Docket No. A-311095 (Order entered June 22, 2001). As of September 30, 2006, CTSI provided competitive local exchange service to 138,806 access lines in 18 Pennsylvania counties. Joint Petitioners’ Exh. No. 1 at 5.

CLD, organized as CTE Telecom, LLC in the Commonwealth of Pennsylvania, provides long distance telephone service as a switched-based reseller in portions of Pennsylvania pursuant to a Certificate of Public Convenience issued by Commission Order entered on December 23, 2002 at Docket No. A- 311225. Joint Petitioners’ Exh. No. 1 at 5.

CTCo utilizes a technologically-advanced, fiber-rich network that is based on 100% digital-switching, integrated DWDM-Sonet transport and host/remote (TR 303 Standards Based) architecture. It was the first telephone company to deploy fiber optics in a toll application and was one of the first local exchange carriers in the nation to deploy a network of all digitally-switched central offices. CTCo operates its own Signaling System 7, STP-based network, which provides efficient call set-up and routing of telephone calls. Throughout its market, CTCo has 11 digital host switches and about 500 remotes. All of the trunks between the hosts and the remote wire centers are connected with fiber optic cable. The network architecture provides for short loop lengths in the “last mile” copper plant, which allows CTCo to aggregate customer lines at the remote wire centers for transport, and concentrates costly network intelligence in a small number of host offices. CTCo has undertaken a three-year network upgrade initiative that

will deliver broadband capability to 100% of households and businesses in its service area by year-end 2008. Joint Petitioners' St. 1.0 at 4-5.

CTCo has committed to 100% broadband availability by December 31, 2008 under Act 183. This commitment is not affected by the transaction. CTCo is ahead of schedule in delivering its Chapter 30 commitments. Presently, approximately 90% of the households and business establishments in CTCo's territory have broadband available to them. CTCo's Plan requires that broadband be 80% available at the end of 2006. Joint Petitioners' St. 1.0 at 5.

CTE and its affiliates, regulated and unregulated, currently employ a total work force of approximately 1,130. Approximately 38% of these employees are covered under collective bargaining agreements. CTCo's bargaining employees' principle current labor contract with the *Communications Workers of America* became effective on December 1, 2005 and remains in effect for an initial period through November 30, 2008, continuing in effect thereafter unless terminated by sixty days' prior written notice. Joint Petitioners' St. 1.0 at 6.

Competition in the CTCo and CTSI service areas is vibrant and expanding every day. The communications industry is in the midst of a radical transformation that is providing customers of every type, whether business or residential, with an ever-increasing array of communications options, while forcing traditional wireline service providers to meet new competitive challenges. Joint Petitioners' St. 1.0 at 9.

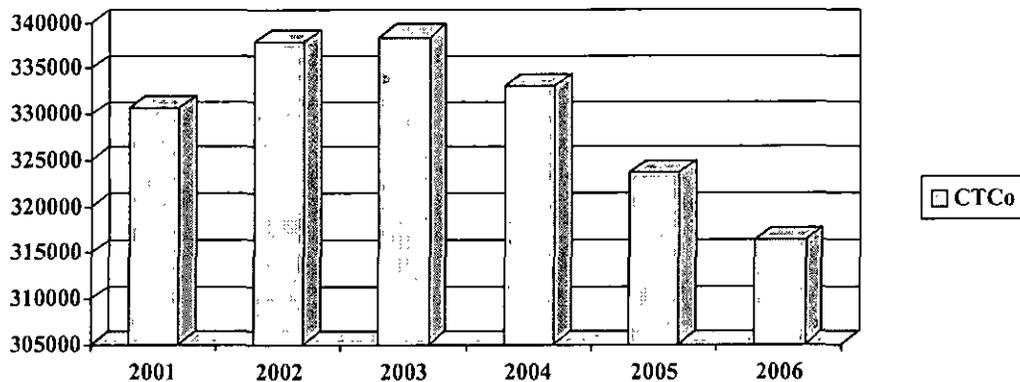
Wireless service is widely available in the service territories of the Joint Applicants. On the cable company side, most residential customers in CTCo's territory now have two wires into their home to provide communications service. So that many customers now have three distinct options. Broadband cable companies pass approximately 90% of the homes in Pennsylvania. Joint Petitioners' St. 1.0 at 11 and 12.

New technologies enable various providers – many of which are not traditional wireline telecommunications providers – to offer services using their existing platforms. These competitors to traditional land line service are relying on unregulated technologies and applications that make possible such services as messaging on the go, high speed data connections, cable telephone, VoIP, e-mail and instant messaging. Joint Petitioners’ St. 1.0 at 9.

The effect of competition on CTCo has been significant. Over the last three or four years, after decades of uninterrupted line gain, access lines losses are now the norm for CTCo.

The following represents a graph showing the reversal of growth over the last six years:

**CTCo Access Line Counts 2001 – 2006\***



\* 2006 data through end of second quarter.

CTCo is losing lines while the number of lines in the market is growing. Joint Petitioners’ St. 1.0 at 14.

As one means by which to maintain profitability, CTCo has consistently emphasized the penetration of second lines in the residential market. CTCo’s residential additional line penetration rate is decreasing, however, as customers find alternatives to traditional dial-up Internet access. As a corollary to this, within the total Internet access market, the market for

traditional, narrowband dial-up access services is shrinking. By way of example, traditional dial-up Internet service provided by an unregulated CTE affiliate, epix<sup>®</sup> Internet Services, has been declining since its peak at nearly 50,000 subscribers in 2001. As of December 31, 2005, epix<sup>®</sup> had approximately 22,400 dial-up subscribers. Joint Petitioners' St. 1.0 at 14.

The effect of the current business environment on CTE and the *Joint Applicants* is increasingly negative. Revenues have been stagnant or declining since 2004, and EBITDA and Free Cash Flow, both widely accepted indicators of financial performance, have declined. "EBITDA" is earnings before interest, taxes, depreciation and amortization whereas "Free Cash Flow" is EBITDA less capital expenditures. These are important financial measures of profitability relied upon by investors and management to evaluate financial health in capital intensive industries, particularly in the telecommunications sector. From 2004 through 2005, CTE's EBITDA declined from \$176.6M to \$169.9M, and is projected to decline to \$161.4M in 2006 as of the end of the third quarter 2006, Mr. Burnside reported in his testimony. Similarly, Free Cash Flow declined from \$133.1M in 2004 to \$126.1M in 2005 and, also at the end of the third quarter 2006, Mr. Burnside reported in his testimony, was projected to decline to \$114.8M in 2006. The decline in these indicators has occurred despite management's best efforts to reverse these trends, which CTE management expects will continue. Joint Petitioners' St. 1.0 at 14-15.

This competition has substantially increased the risk factors of CTE's business units. It is now much more difficult to successfully anticipate and respond to various competitive factors affecting the industry, including regulatory changes that may affect CTE's competitors and CTE differently, new technologies and services that may be introduced, changes in consumer

preferences, demographic trends and discount pricing strategies by competitors. Joint Petitioners' St. 1.0 at 16.

The telecommunications industry is subject to rapid and significant changes in technology. If the Applicants do not replace or upgrade technology and equipment that becomes obsolete, they will be unable to compete effectively, as they will not be able to meet customers' needs or expectations. Joint Petitioners' St. 1.0 at 16. At the same time, as competition is increasing, it is more difficult to maintain profitability, particularly as compared to other carriers with larger scope and scale. This adversely affects the Joint Applicants' ability to attract investment and debt capital at competitive rates. Joint Petitioners' St. 1.0 at 14.

In addition to line loss and the continued penetration of wireless and facilities-based competition, CTCo is seeing a decline in its revenue streams that are derived from other than the end user. Federal "average schedule" settlements from which CTCo derives its interstate revenue flow are declining on a per line basis. In addition, as lines are lost to competition and minutes of use decline, the company has experienced even greater revenue loss from its average schedule settlements. Joint Petitioners' St. 1.0 at 17.

### **Citizens Communications Company**

Citizens, a publicly-traded Delaware company (NYSE: CZN), is a highly-regarded, full-service communications service provider, and the seventh-largest local exchange telephone company in the country. Citizens, under the Frontier Communications Solutions brand, offers telephone, television and Internet services, as well as bundled offerings, ESPN360 streaming video, security solutions and specialized bundles for residences, small businesses and home offices. Joint Petitioners' Exh. No. 1 at 6 and Citizens' St. 1.0 at 6.

Citizens provides services predominantly to small and medium-sized rural markets. During the last eight years, Citizens has grown to become a substantial presence in the rural local exchange carrier segment of the telecommunications market through the targeted acquisition of rural companies, and the successful integration of operations and support functions. During this time frame, Citizens has effectively and efficiently grown its operations nearly three-fold. Citizens believes that the key to its continued success is focus on its core mission: “to be the leader in providing communications services to residential and business customers in our markets.” Citizens’ St. 1.0 at 6-7.

Citizens is typically the incumbent carrier and provider of last resort in the markets it serves and provides the “last mile” of telecommunications services to residential and business customers in these markets. Citizens provides services primarily to residential customers and, to a lesser extent, non-residential customers. Citizens’ St. 1.0 at 7.

In Pennsylvania, Citizens owns and operates five local exchange companies (the “Frontier Companies”): Frontier Communications of Breezewood, LLC; Frontier Communications of Canton, LLC; Frontier Communications of Lakewood, LLC; Frontier Communications of Oswayo River, LLC; and Frontier Communications of Pennsylvania, LLC (collectively the “Frontier Companies”).<sup>5</sup> Joint Petitioners’ Exh. No. 1 at 6-7. Frontier

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<sup>5</sup> Citizens’ acquisition of Frontier Subsidiary Telco, LLC, the immediate parent of the five Frontier companies operating in Pennsylvania, was approved by the Commission by Order entered December 8, 2000. *Joint Application of Frontier Communications of Breezewood, Inc., Frontier Communications of Canton, Inc., Frontier Communications of Lakewood, Inc., Frontier Communications of Oswayo River, Inc., Frontier Communications of Pennsylvania, Inc., Frontier Communications of America, Inc., For All Approvals Under the Public Utility Code To Complete the Merger with and Transfer of all of the Utilities’ Stock of the Corporate Parent, Frontier Subsidiary Telco, Inc. by Citizens Communications Co.*, Docket Nos. A-310400F003; A-310550F003; A-311750F003; A-312600F002; A-311250F003; and A-310153F003, Order entered December 8, 2000 (“*Citizens Frontier Acquisition Order*”). These companies are wholly owned by Frontier Subsidiary Telco, LLC by virtue of transactions previously approved by this Commission. Frontier Communications of Breezewood, Inc. (Docket No. A-310400F500, Dec. 18, 1986); Frontier Communications of Canton, Inc. (Docket No. A-310550F500, June 11, 1987); Frontier Communications of Lakewood, Inc. (Docket No. A-311750F500, Sept. 1, 1988); Frontier Communications of Oswayo River, Inc. (Docket No. A-105765F500, Dec. 7, 1984); and Frontier Communications of Pennsylvania, Inc. (Docket No. A-311250F500). Joint Petitioners’ Exhibit No. 1 at 7, n.6.

Communications of Breezewood, LLC serves approximately 4,102 access lines in Bedford and Fulton Counties in 314 square miles of service territory. Frontier Communications of Canton, LLC provides service to approximately 4,061 access lines, divided into two exchanges, in the counties of Bradford, Tioga and Lycoming. Frontier Communications of Lakewood, LLC has one exchange and serves approximately 1,471 lines in Schuylkill County. Frontier Communications of Oswayo River, LLC serves approximately 2,204 lines in 183 square miles of Potter and McKean Counties through three exchanges. Frontier Communications of Pennsylvania, LLC, the largest of the Frontier Companies, serves approximately 26,844 local access lines, divided into four exchanges, located predominantly in Lancaster County and, to a limited degree, in Berks County. Citizens' St. 1.0 at 7-8.

Since being acquired by Rochester Telephone in the 1980s, the Frontier Companies have enjoyed steady improvements in their networks. The Frontier Companies have been upgraded to be 100% digital. As part of its original Chapter 30 commitments, Frontier completed an upgrade to its network to make it 100% SS7 capable for all five companies. Frontier Communications of Breezewood made upgrades to its network to allow for elimination of party-line service. The Frontier Companies also are installing a diverse path for Internet to enhance the reliability of Internet service provided to their customers. This diverse path was installed at year-end 2006. All of these improvements contribute to providing improved service to customers. Citizens' St. 1.0 at 9.

The Frontier Companies currently provide approximately 90% of their customers with broadband availability. The Frontier Companies' Chapter 30 Plan required 90% broadband availability by year-end 2006 and 100% by year-end 2008. They are on track to meet this final benchmark. Citizens St. 1.0 at 9.

## **The Transaction**

On September 17, 2006, Citizens and CTE entered into an Agreement and Plan of Merger (“Merger Agreement”) whereby Citizens will acquire control of CTE and, indirectly, CTE’s utility subsidiaries, the Joint Applicants. Joint Petitioners’ Exh. No. 1 at 17. A complete copy of the Merger Agreement was attached to the Application as Appendix “B.” Joint Petitioners’ Exh. No. 1 at 19. Approval of the Commission is requested for the entirety of the transactions set forth therein. Certified copies of Board of Directors’ Resolutions of CTE and Citizens authorizing the Merger Agreement were attached to the Application as Appendices “E” and “F,” respectively. Joint Petitioners’ Exh. No. 1.

As a result of the transaction, CTE will become a wholly-owned, direct subsidiary of Citizens. The transaction represents a change in indirect ownership only. Ownership of the Applicants will continue to reside in the parent company, CTE. At closing, the Joint Applicants will retain the same subsidiary corporate relationships to CTE as they did prior to the proposed CTE stock transfer. Joint Petitioners’ Exh. No. 1 at 3. Organizational charts depicting the relationship between CTE and the Joint Applicants pre- and post- transaction were attached to the Application as Appendix “C.” Joint Petitioners’ Exh. No. 1. These charts demonstrate that there is no change in direct ownership or organization of the Joint Applicants. Joint Petitioners’ Exh. No. 1 at 9.

Under the Merger Agreement, Citizens will assume the existing debt and acquire all outstanding shares of CTE for a total consideration of approximately \$1.16 billion in a cash-and-stock transaction determined by arms length negotiation of the parties. Citizens will finance the cash portion of the purchase price with a combination of cash on hand and debt. Citizens has

obtained a commitment from Citigroup for the financing necessary to complete the acquisition. Joint Petitioners' Exh. No. 1 at 8-9.

The transaction does not involve assignment or creation of any certificates of public convenience or tariffs held or published by CTE's operating utility subsidiaries. No securities issued by the Joint Applicants are affected. The current financing and capital structure of the Joint Applicants will not be affected by the transaction. The books of account of the Joint Applicants will not be affected by the transaction. The income statements and balance sheets of Joint Applicants are also not affected by the proposed transaction in any way. Joint Petitioners' Exh. No. 1 at 9.

No customers are proposed to be transferred by this transaction. The Joint Applicants will continue operation. The proposed transaction will not affect the regulatory authority of the Commission over the Joint Applicants. Joint Petitioners' Exh. No. 1 at 9-10.

## **LEGAL STANDARDS FOR APPROVAL**

The applicable legal standard in this proceeding is whether approval of the merger agreement is "necessary and proper for the service, accommodation, convenience and safety of the public."<sup>6</sup> Moreover, the transaction must "affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way."<sup>7</sup>

The "necessary or proper" standard generally requires a showing of inadequacy of existing service, public need, and fitness to provide service.<sup>8</sup> Here, the parties need not demonstrate inadequacy of existing service or public need for service, because an existing utility

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<sup>6</sup> 66 Pa. C.S. § 1103.

<sup>7</sup> *City of York v. Pa. P.U.C.*, 295 A.2d 825 (Pa. 1972).

<sup>8</sup> *Seaboard Tank Lines, Inc. v. Pa. Pub. Util. Comm'n*, 502 A.2d 762 (Pa. Cmwlth. 1985).

operation exists.<sup>9</sup> Under Sections 1102 and 1103 of the Public Utility Code (“Code”),<sup>10</sup> the Joint Applicants need only show that the party to whom the control of CTE is being transferred is legally, technically, and financially fit.<sup>11</sup>

Where, as here, Citizens is presently operating entities already certificated by the Commission to provide similar telecommunications services to the public, Citizens is presumed to be technically, financially and legally fit to provide the proposed service.<sup>12</sup>

In addition to the traditional fitness requirements, the Pennsylvania Supreme Court has determined that Section 1103 of the Code requires that applicants proposing mergers and acquisitions demonstrate that the transaction “will affirmatively promote the ‘service, accommodation, convenience, or safety of the public in some substantial way.’”<sup>13</sup> This burden to prove “affirmative benefits” has been applied by the Commission and upheld by the courts in various consolidation and merger application cases since the *City of York* decision.<sup>14</sup>

In order to show affirmative benefits, the Joint Applicants must demonstrate that there are substantial public benefits that will result from the transaction and that those benefits outweigh any detriments that may consequently result.<sup>15</sup> The standard does not require the Commission to disallow a transaction that might be detrimental to one particular party or another; rather, the

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<sup>9</sup> *Re Glenn Yeager, et al.*, 49 Pa. PUC 138 (1975) (continuing public need presumed where public utility service is already being provided in the service territory subject to the application).

<sup>10</sup> 66 Pa. C.S. §§ 1102 and 1103.

<sup>11</sup> *Seaboard Tank Lines*, 502 A.2d at 764; *Warminster Twp. Mun. Auth. v. Pa. Pub. Util. Comm’n*, 138 A.2d 240, 243 (Pa. Super. 1958).

<sup>12</sup> *South Hills Movers, Inc. v. Pa. Pub. Util. Comm’n*, 601 A.2d 1308, 1310 (Pa. Cmwlth. 1992).

<sup>13</sup> *City of York, supra* (quoting 66 Pa. C.S. § 1103(a)). In *City of York*, the Supreme Court rejected the prior standard for approval of mergers whereby a merger had to be approved *unless* it was established that there would be some substantial public detriment. *City of York*, 295 A.2d at 828 (reversing *Northern Pa. Power Co. v. Pa. Pub. Util. Comm’n*, 5 A.2d 133 (Pa. 1939)).

<sup>14</sup> See, e.g., *Re Verizon Communications, Inc.*, Docket No. A-310580F0009, 2006 WL 995853 at 11 (Pa. P.U.C.) (January 11, 2006); *Joint Application of PECO Energy Co. and Public Service Enterprise Group, Inc. with and into Exelon Corp.*, 2006 WL 559274 (Pa. P.U.C.) (February 1, 2006); *ARIPPA v. Pa. Pub. Util. Comm’n*, 792 A.2d 636, 655 (Pa. Cmwlth. 2002).

<sup>15</sup> *Middletown Twp. v. Pa. Pub. Util. Comm’n*, 482 A.2d 674, 682 (Pa. Cmwlth. 1984); *Re GPU, Inc.*, 96 Pa. PUC 1, 14 (2001).

Commission must weigh and measure how the benefits and detriments “impact on all affected parties.” If the public benefits outweigh any detriments, the application should be approved.<sup>16</sup>

Examples of substantial affirmative benefits that the Commission has accepted as satisfying the standard in *City of York* include: statements that economies of scale will occur in administrative, employee, executive and insurance areas; greater bargaining position for obtaining capital; improved labor market conditions; corporate structure and size more likely to attract investors; improved service; simplified relationships with other businesses and government agencies; and improved administration of tariffs and simplification of regulatory matters.<sup>17</sup> The affirmative benefit standard is a broad standard that does not require specific quantification of synergy savings.<sup>18</sup>

Section 1103 also authorizes the Commission to impose “just and reasonable” conditions upon the approval of an application; however, such power is not without limit. Any conditions

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<sup>16</sup> *Id.* If the Section 1103 standard required rejection of an asset acquisition, consolidation, merger, or change in control simply because some detriment to any party could result, then such transactions would never be approved because there are always both benefits and detriments to any change in the status quo. When the *overall* affirmative public benefits outweigh any possible detriments, the standard has been met; any other conclusion is simply unrealistic and unachievable. As the Commission noted in *Re GPU, Inc.*, the 2001 merger between GPU and FirstEnergy, if the risks posed by possible detriments of the transaction are significant, which they are not here, the Commission can impose conditions on the approval of the merger so that said “risks do not outweigh the merger benefits.” *Re GPU, Inc.*, 96 Pa. PUC at 7.

<sup>17</sup> *City of York*, 295 A.2d at 828-29; *See also, Re PG Energy, supra* (substantial affirmative benefits included: more stable and financially robust company, economies through consolidation of certain public company functions and purchasing practices, enhanced ability to raise and attract capital, diversification of risk associated with smaller service area’s weather and economic conditions).

<sup>18</sup> *Re SBC Communications, Inc.*, 2005 WL 2901682 at 14 (Pa. P.U.C.) (October 6, 2005); *Re Verizon Communications, Inc.*, 2006 WL 995853 at 11. There are many examples of asset acquisition or merger cases in which the Commission did not require quantification of affirmative benefits. *See, e.g., Application of Newtown Artesian Water Co. and Indian Rock Water Co.*, 76 Pa. P.U.C. 260 (1992); *Re PG Energy*, 1999 WL 1036580 (Pa. P.U.C.) (September 15, 1999); *Re Pennsylvania American Water Co.*, 97 Pa. P.U.C. 314 (2000). Indeed, the subjects of quantification of savings and pass-through of those savings to customers are more appropriately addressed in rate proceedings subsequent to application approval proceedings. *See Application of Newtown Artesian Water Co., supra; Re PG Energy, supra.*

imposed must be supported by substantial evidence, based upon matters within the Commission's statutory jurisdiction, and cannot be unreasonably broad or vague.<sup>19</sup>

## **THE TRANSACTION MEETS THE TESTS OF SECTION 1102 AND *CITY OF YORK* Citizens is Legally, Technically and Financially Fit**

As noted by the Commission in its 2000 *Citizens Frontier Acquisition Order*, there are numerous positive benefits of horizontal alignment among rural local exchange carriers generally, and specifically by Citizens:

Control of the Frontier Utilities will become controlled by a holding company the operational subsidiaries of which are primarily local utilities in many jurisdictions. The applicants have provided in their application evidence of Citizens' financial strength together with evidence of Citizens' experience in managing communications utilities in many states.

The applicants note in their filing that Citizens has specialized in providing local utility service to rural and suburban areas in many jurisdictions. The quality of service that Citizens and Frontier Telco have provided in the past through their jurisdictional subsidiaries promises that their intended expansion of services in Pennsylvania will contribute to more customers in outlying areas having available advanced services. The Chapter 30 Plans of the Frontier ILECs will remain unaffected by the proposed acquisitions, and the applicants aver that such services will include DSL service.<sup>20</sup>

These same positive attributes are inherent in the proposed parent-level acquisition by Citizens of a sixth rural Pennsylvania local exchange company, and its CLEC and long distance affiliates.

Citizens has a strong income statement and balance sheet and is financially qualified to complete the CTE acquisition and to operate the acquired properties in a manner that is consistent with the public interest.

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<sup>19</sup> *Western Pa. Water Co. v. Pa. Pub. Util. Comm'n*, 311 A.2d 370 (1973) (condition imposed by Commission upon approval of water service application was not just and reasonable because it attempted to require action by the utility that was not within Commission's jurisdiction to order unilaterally and was not based upon sufficient record evidence).

<sup>20</sup> *Citizens Frontier Acquisition Order*, supra, at 4-5.

- **Cash Generation.** Citizens will continue to grow free cash flow through further growth of broadband and value-added services, productivity improvements, and a disciplined capital expenditure program that emphasizes return on investment while delivering enhanced and broadband services to all markets. For 2004 and 2005, Citizens' EBITDA (Earnings Before Interest, Taxes, Depreciation and Amortization) was \$1,009.7M and \$1,109M, respectively. Free Cash Flow for those same periods was \$473.9M and \$514.7M. Citizens' St. 1.0 at 10.
- **Stockholder Value.** During 2005, Citizens repurchased \$250.0 million of its common stock and continues to pay an annual dividend of \$1.00 per common share. Citizens' St. 1.0 at 10.
- **Growth.** During 2005 and through September 30, 2006, Citizens added approximately 99,000 and 51,000 new high-speed Internet customers, respectively, and almost 84,000 and 51,000 customers, respectively, began buying a bundle or package of services. On September 30, 2006, Citizens had more than 362,500 high-speed data customers and approximately 492,000 customers buying a bundle or package of services. During 2005, Citizens began offering a television product in partnership with Echostar's DISH Network, and, on September 30, 2006, had approximately 43,000 customers buying a "triple play" package of telephone, television and high-speed Internet service. Citizens' St. 1.0 at 10.

Citizens is very prudent in the management of its capital structure - focusing on the proper mix of debt and equity. The transaction strengthens Citizens' balance sheet with increased free cash flow and diversifies its operations around the country, which makes the enterprise less susceptible to regional downturns. This belief has been validated by the debt

ratings agencies that, as a group, have essentially left Citizens' ratings unchanged since the merger agreement was announced. Citizens' St. 1.0 at 13.

The debt associated with this transaction will be unsecured debt held by the parent company. Accordingly, it will have no impact on CTE, any of its assets or its regulated operations. None of Citizens' existing debt, nor the debt that will be increased as a result of this transaction, will be secured by CTE assets or stock. There is no mortgage security or pledge of any kind. Therefore, CTE will retain the ability to borrow funds on its own if that need were to ever arise. That debt would be structurally senior to the parent company's debt, regardless of the financial condition of the parent company. Citizens' St. 1.0 at 13.

CTE's financial position will be improved by Citizens' acquisition of CTE's stock. Whenever two companies come together in a transaction such as this, there is opportunity to result in margins greater than the sum of what the two companies generated independently, due to the elimination of redundant departments and functions. This is such a transaction. Citizens' St. 1.0 at 11.

Upon closing of this transaction, the combined company will strengthen Citizens' standing as the seventh-largest local telephone exchange company in the United States, with pro forma annual revenues of approximately \$2.4 billion and operations across 24 states. Operations under the Frontier brand name will have approximately 2.6 million ILEC and CLEC access lines, 400,000 high-speed Internet subscribers and 6,400 employees, with a strong concentration in the Northeast (based upon information as of September 30, 2006). Citizens' St. 1.0 at 12.

## **Positive Benefits of the Transaction**

Policymakers who envisioned and encouraged competition in the telecommunications industry should look at the current marketplace as a success. Competition has evolved, including in areas not originally envisioned. Consumers have been the primary beneficiaries. They have seen a growth in options of service providers, the introduction of new technologies and services, and the ability to purchase their voice, data and video services from a single provider. Citizens' St. 1.0 at 3.

While this change has generally been beneficial, it has created challenges to ILECs like Citizens and CTCo that built and invested in telecommunications networks for years before competition, broadband, and VoIP were even considerations. ILECs like Citizens and CTCo, that have long-standing reputations as companies that have provided high-quality service to customers in rural America, are faced with growing competition, access line loss and regulatory disparities that make it increasingly challenging to compete on a level playing field. Citizens' St. 1.0 at 3.

For a smaller regional company, like CTE and CTCo, growing competition has effected a reversal of decades of line growth. Over the last three or four years, after decades of uninterrupted line gain, access line losses are now the norm for CTCo. Overall, as previously described, CTE's financial position is not improving.

While CTE has managed its costs and expenses well as these changes have occurred, without a merger with a larger and better capitalized partner capable of providing the systems, financial resources and human capital necessary to grow and upgrade the network, CTCo will not be able to maintain shareholder value, attract capital on attractive terms and provide high quality and appealing services to its marketplace. Joint Petitioners' St. 1.0 at 18.

The reasons are clear. The incumbent local exchange company - once the monopoly provider of local voice services - has been facing a growing number of competitors in recent years. Competition now comes from many different forms: from wireless providers and cable companies as well as overbuilders and resellers. Consumers now have an expanded view of what telecommunications means, and today wireless, cable and satellite make up an increasing portion of the product spectrum. Citizens' St. 1.0 at 2.

The ILECs, such as CTCo, have been required by regulatory compact to be ubiquitous in their regulatorily-defined service territories and, for some customers, will continue for some time, albeit probably short, to be the sole carrier of last resort. Moreover, unlike cellular and cable companies operating in the same area, CTCo is the only carrier that has contractually committed to 100% broadband deployment. Joint Petitioners' St. 1.0 at 19.

This Commission must allow CTCo, as the default provider of both voice and broadband, to realize the efficiencies to be gained in this transaction in order to remain an effective competitor. Joint Petitioners' St. 1.0 at 19.

The continued survival of the CTE companies should be considered an "affirmative public benefit" and a reason to approve CTE's parent-level alignment with a much larger multi-state local exchange company, both from the perspective of maintaining the incumbent local exchange company operations and continuing the competitive operations of CTSI. Joint Petitioners' St. 1.0 at 19.

Size and scope are becoming increasingly important. The need to grow the business and take advantage of economies of scale, without sacrificing the quality and depth of service, is a driving force in the consolidation of companies. In such consolidations, companies are able to become more efficient in the governance and shared services departments.

This is true for both the smaller players within the industry as well as the largest players. The recent SBC acquisition of AT&T (and the subsequent re-naming of the enterprise) speaks volumes about the direction of the industry. Verizon's acquisition of MCI is yet another example. In other words, competition is driving horizontal consolidation (e.g., Embarq and Windstream), as well as vertical integration (e.g., AT&T and MCI). Joint Petitioners' St. 1.0 at 17-18.

It is fair to say that small and mid-sized ILECs likewise, and perhaps more so, will continue to evaluate consolidation for the same reasons – that is, to better position themselves to compete, to maximize efficiencies and to enable themselves to provide better value to their customers. Citizens' St. 1.0 at 5.

In this case, Citizens has identified approximately \$30 million annually in redundant governance and shared services cost savings that it will realize within two years of the transaction closing. This \$30 million amount includes both wage and non-wage expenses. Non-wage expenses such as CTE board of director fees, audit fees, and NASDAQ listing fees are examples of separate expenses that will no longer be incurred. Citizens' St. 1.0 at 11.

Included in this annual savings, the reduction of positions related to governance and support services will account for the vast majority of the anticipated reduction in positions. Citizens' St. 1.0 at 11 and Citizens' Exhibit No. DM-1. Citizens will honor the terms of all existing collective bargaining agreements between the CTE Companies and the union and, in line with the acquisition agreement, Citizens has agreed to honor CTE severance policies for a period of time. Citizens' St. 1.0 at 11.

On the revenue side of the equation, the combined companies will be better able to focus on continuing to provide their customers with innovative and value-added services. Citizens will

apply its “growing market share” approach to new product and service deployment -- a benefit to CTE’s current and future customer base. Joint Petitioners’ St. 1.0 at 18.

Citizens will provide similar value, through its products and periodic promotions to the customers of the CTE Companies. “Take rates” (i.e., penetration) of Citizens’ customers for many services, including Internet and video satellite, are significantly higher than for CTCo. Citizens’ Exhibit No. DM-2 (Highly Confidential) illustrates the customer opportunities in this regard. Citizens’ St. 1.0 at 18-19.

Citizens, under the Frontier brand name, has taken significant steps to increase the value delivered to its customers by providing new products and enhancements to its traditional offerings through a strategy of integrating services through bundled and promotional offerings. Frontier seeks to ensure that customers are able to enjoy the benefits of those offerings without inconvenience by performing “full installs” of its products in the customers’ homes. When installation technicians leave the customers’ homes, all Frontier services are fully functional and ready for use. Citizens’ St. 1.0 at 15-16.

Some of the additional features that are provided to high-speed Internet customers include:

**ESPN-360**

ESPN360 provides Frontier sports fans with exclusive live sporting events, inside analysis from ESPN commentators on all major sports, on-demand access to full-length Sports Center interviews from marquis athletes, and high-quality broadband video games. ESPN360 is available to all Frontier broadband subscribers at no additional charge.

**Frontier Secure Connections**

Frontier and Computer Associates (a market leader in PC-based protection) have partnered to provide PC-based security services that include Anti-Virus, Personal

Firewall, Pop-Up Blocker, Anti-Spam and Anti-Spyware. Frontier Secure Connections security software is available at no additional charge to all Frontier High-Speed Internet residential customers who are currently within at least a one-year term plan and is also available to others for a nominal monthly fee.

### **Frontier MyWay website**

- Search engines from Google, Ask Jeeves, Yahoo, and LookSmart, ensuring users get the most comprehensive answers.
- Content from over 75 Content Providers for news, weather, sports, and entertainment, so users can stay most current.
- Personalization of the home page, including layout, background, fonts, colors, pictures, and content so the page looks exactly the way our users want.
- Tools to help users to lead a more informed, and in some cases, more fun, digital lifestyle (e.g. reminders, dictionaries, and daily diversions)
- Pop-up ad blocking is available so users can cut through third-party marketing clutter to get to the content they want.
- Customer privacy tools along with Frontier Secure Connections to ensure users can participate online in the safest environment possible.

Citizens' St. 1.0 at 16-17.

Citizens has undertaken extensive customer analysis and research to create residential and business bundles that provide feature and cost benefits across all socio-economic demographics. These bundles have been successful in existing markets and Citizens plans to offer the same service to customers in CTCo's service area. Some of the key product bundle offerings include:

### **Choice of residential packages, features and price points**

- Voice only; basic service with minimal additional features.
- Double play; Voice and High-Speed Internet.
- Triple play; Voice, high-speed Internet and television packages.

### **Frontier Connections**

- Telephone, television and Internet on one bill at a discounted rate
  - Telephone - Unlimited local calling and choice of calling features including voice mail, caller ID and more. Includes either 300 or 600 minute blocks of time, or unlimited voice calls within the United States for certain subscribers.
  - Television - Digital satellite TV from Dish Network. All channels are 100% digitally delivered and there is no equipment to purchase. Local

channels available in most areas and includes professional installation on up to 4 TVs.

- High-speed Internet.

#### **Small Business Bundle**

- Voice only or Voice and Internet bundles on one bill at a discounted rate
  - Telephone – One or two business lines (or Centrex where available), choice of calling features including voice mail, call-forwarding and more. Includes choice of 300, 600 or 900 minute blocks of Long Distance time.
  - High-speed Internet

Citizens' St. 1.0 at 17.

Citizens' strategy is to create promotions that enable segments of its customer base to experience the benefit of bundled offerings where they previously may not have had such an opportunity or could not afford the services. As an example, up to 40% of Citizens' rural markets do not have a personal computer (PC) in their household. Citizens believes that the key to crossing the digital divide is to provide all homes with broadband capability and the ability to receive next generation services via this connection. Citizens' St. 1.0 at 17-18.

In response, Citizens created its recent, fourth quarter 2006 promotion titled "Freeride." Under this promotion, any new customer who purchased a voice and HSI (high-speed Internet) package during the quarter at a bundled discounted rate and with a two-year commitment received a free Dell PC. These prices are guaranteed for two years and are extremely competitive in the marketplace. Citizens' St. 1.0 at 18.

The Frontier Companies rolled out their "triple play" offerings for all customers in April 2005. As a result of a partnership with Dish Network, most Frontier customers have access to voice, video and data on their Frontier bill. Frontier also is able to offer innovative marketing programs to its customers through the support of its corporate marketing department. An example of this innovation is the recent "Free Ride" promotion described above. Citizens' St. 1.0 at 18.

An additional benefit is the geographic proximity of the Citizens' New York State and Pennsylvania operations, which enhances the ability to offer inter-company assistance and promotes work force flexibility during emergencies or similar situations. Upon completion of the transaction, approximately 579,000, or 27%, of the combined entity's access lines as well as 490 installation and repair operations employees will be within an approximate 120-mile radius of Dallas, PA (CTE's headquarters). Citizens sees great value in the concentration of lines from an operational efficiency and customer service perspective. A concentration of operations and employees among contiguous geographies allows Citizens to respond to emergency situations in a timely manner with the appropriate level and quality of resources. Citizens' St. 1.0 at 14.

In summary, the purchase by Citizens offers the Joint Applicants a larger parent organization focused on the local exchange business that shares the CTE Companies' history of commitment to excellent customer service to the customers of rural America. Citizens is and will remain committed to providing new, advanced services to all of its customers wherever technologically feasible and economically reasonable. Citizens' presence and the additional size of the combined entity will help the Joint Applicants anticipate technology changes and build for an evolving marketplace. Citizens' St. 1.0 at 19.

### **Additional Public Benefits Resulting From Settlement**

The Settlement Agreement contains many interlocking provisions that assure that service quality will remain high at CTCO and the five Pennsylvania Frontier local exchange companies, while rates remain comparably low.

Quality of service is addressed through service-related job assurances, as well as specific minimum employment levels set for customer interfacing service jobs represented by the

Communications Workers of America. On top of that, service reporting provides a means of monitoring service quality. Services themselves are then enhanced by commitments made to increase the availability of 3 Mbps service and stand-alone high-speed Internet access.

Potential rate increases under the price cap form of regulation applied to CTCo and the five Frontier Companies are restricted by a system of rate caps and freezes for the next three years, while not prohibiting participation in various important access rate reforms under consideration at the Federal Communications Commission and this Commission. Publication of Lifeline services is enhanced through the distribution of brochures with the expectation that penetration of these services will be enhanced.

**Rate Caps/Freezes** – CTCo and the Frontier Companies have agreed to restrict dial tone line rate increases during the next three years to:

- 2007 – Increase in monthly charge for residential primary limited to \$.90 and for B-1 to \$.50.
- 2008 – Increase in monthly charge for residential primary limited to \$.50 and for B-1 to \$.25.
- 2009 – No increases in residential primary or B-1 rates.

In making these changes, CTCo and the Frontier Companies will adhere to the \$18.00 residential rate cap. Allowed business rate increases are less than residential increases. CTCo and the Frontier Companies may request increases in non-access line rates. Changes in rates as a result of important generic federal and state required changes to access charges and/or universal service funding or an exogenous event as defined in Chapter 30 Plans is reserved.

Importantly, revenues that CTCo and the Frontier Companies forego as a result of the price caps and freezes may not be preserved and taken later. Under their Chapter 30 Plans, the companies would be permitted to defer (i.e., “bank”) price increases allowed under their price cap formulas and take those increases in later years. For a three-year period, however, the companies are essentially

agreeing to waive these Chapter 30 Banking provisions. Under the express limitations contained in the Settlement, the companies are in a position of “take it or leave it.”

**Increased 3 Mbps Bandwidth Availability** - Under Chapter 30, CTC Co agreed to deploy 1.544 megabit per second broadband capacity to 100% of its service territory by year-end 2008. Under the Settlement Agreement, CTC Co has now agreed to advance the capacity of its network, by making 3 megabit per second service available to a total of 88,000 households/businesses, 48% of the currently DSL-capable households/businesses, within three years.

**Digital Subscriber Lines** - Currently, a customer must purchase voice service and high speed Internet service at the same time. Under the Settlement, CTC Co and the Frontier Companies agree to provide stand-alone high-speed Internet and ISP service to their customers for a period of two years. This increases customers’ options of choosing among retail service providers. This is a federally deregulated service and in recognition of that status, the companies retain pricing flexibility for the service.

**Lifeline** – CTC Co and the Frontier Companies, under the Agreement, will produce and distribute at their expense a Lifeline brochure explaining Lifeline and providing for telephonic application. The companies will provide these brochures to county assistance offices and local assistance agencies and organizations in their territories for a three-year period.

**Employment** – While Citizens has been candid that duplicative governance, managerial, and support positions will not be retained under this horizontal merger, CTC Co and the Frontier Companies have committed to “continue to employ the appropriate level of resources, including workforce, employee benefits, network and investment necessary to achieve the continuation of quality service to their existing and prospective Pennsylvania customers while remaining competitive.” Specifically, CTC Co agrees to maintain at least 95% of the level of CWA-

represented positions through the end of the current contract period, excepting for bona fide attrition. As part of this job level guarantee, CTCo has agreed that its customer call center will remain open during this period (and not consolidated with other Citizens' call centers). All terms of existing bargaining agreements will be honored.

**Service Quality Reporting** – In order to monitor service level during the period following closing of the transaction, CTCo and the Frontier Companies have agreed to provide reports of various service metrics to the OCA, OSBA and OTS. These metrics are trouble report rate, missed appointments, and intervals between a request for new basic service and installation. Further, CTCo and the Frontier Companies agree to advise the OCA and OSBA if the service repair outage index falls below 80% restored/repared within 24 hours for reasons not attributable to customer requests for a later time. The parties agree to resolve and indicate service issues with the companies *prior to taking any formal action* at the Commission.

**Debt and Transaction Costs.** Finally, the Joint Applicants have agreed not to seek rate recovery of any costs of the transaction, including recovery of any costs resulting from implementing the agreed-to stipulations. Additionally, CTCo will not guarantee the debt or credit instruments of Citizens or any affiliate not regulated by the Commission or grant a mortgage or other lien or otherwise pledge used and useful property as security for repayment of the principal or interest of any loan or credit instrument of Citizens for a period of three years.

**Enhanced Cable Telephony Competition** – The resolution of this case has occurred at the same time as the entry of the Commission's decision of the Sprint "wholesale" case. CTCo, therefore, has also been able to resolve the issue of retail cable telephone service with various pending cable company applications. The Joint Applicants worked with Sprint and the cable companies to advance their competitive plans as facilities-based telephone service providers.

CTCo has successfully stipulated its lack of objection to the issuance of CLEC certificates to Sprint, Blue Ridge and RCN. These are substantial, facilities-based carriers who will be offering telephone services in CTCo's territory in the near future. This will enhance competitive customer choice.

### **Combined Benefits**

In overall effect, the proposed acquisition of CTE by Citizens provides across-the-board benefits to the public. The *Joint Petitioners* become associated with a strong and viable corporate organization focused on rural telephone service, and able to keep pace with the scale and scope needed in today's highly competitive marketplace. Citizens is a company focused on the rural market whose strategy is a proactive set of customer services that introduce new technologies and bandwidth. At the same time, traditional services are enhanced, monitored and maintained, while rates for traditional, "plain old telephone service" are kept at low levels.

### **REASONS FOR REQUESTING APPROVAL BY MARCH 1, 2007**

The above benefits are not realized until closing occurs. The Joint Applicants and Citizens believe that a parent level merger which makes so much sense operationally and financially and has such obvious customer benefits should be approved on its merits.

As part of the settlement process, the CWA and the statutory advocates have sought and the companies have agreed to provide additional benefits in areas of particular concern to them, many of which have nothing to do with the merits of the transaction itself, including stand-alone high speed internet, greater bandwidth and lifeline services, for example.

Citizens and the Joint Petitioners have made these considerable concessions in order to obtain earlier approval of the transaction. FCC approval is expected within two weeks of the filing of this settlement petition. This case in Pennsylvania, filed at the same time as the FCC proceeding, will be five months old as of March 1, 2007, the date for which Commission approval is sought. In order for Citizens and the Joint Petitioners to receive their bargained-for result, approval of an “all parties, all issues” settlement, approximately one and one half months after its filing is appropriate.

Citizens is eager to close the transaction and bring the benefits of its operating and customer-driven philosophies to a broader section of Pennsylvania.

## **CONCLUSION**

For these reasons, Commonwealth Telephone Company, CTSI, LLC, and CTE Telecom, LLC d/b/a Commonwealth Long Distance Company and Citizens Communications Company request the Commission issue an Order approving the above-captioned Application, granting the requested Certificate of Public Convenience and incorporating the above-stated terms of this Settlement Petition at its Public Meeting of March 1, 2007.

Respectfully submitted,

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Counsel for Citizens Communications Company

DATED: January 19, 2007

APPENDIX "D"

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Joint Application of Commonwealth	:	
Telephone Company, CTSI, LLC and CTE	:	
Telecom, LLC, d/b/a Commonwealth Long	:	
Distance Company for all approvals under	:	Docket No. A-310800F0010
the Public Utility Code for the acquisition	:	Docket No. A-311095F0005
by Citizens Communications Company of	:	Docket No. A-311225F0003
all of the stock of the joint applicants'	:	
corporate parent, Commonwealth	:	
Telephone Enterprises, Inc.	:	

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STATEMENT IN SUPPORT OF SETTLEMENT OF  
COMMUNICATIONS WORKERS OF AMERICA

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On October 26, 2006, Communications Workers of America (CWA) filed a Protest against the proposed acquisition of Commonwealth Telephone Company (Commonwealth) by Citizens Communications Company (Citizens). CWA's Protest raised several concerns with the proposed transaction, including the following:

[T]he Application does not provide any concrete evidence that the transaction will benefit Commonwealth's consumers with increased investment in the network and commitments to maintain, and if necessary increase, staffing levels to ensure quality service and deployment of advanced service to Commonwealth's local telephone customers.

[T]he proposed transaction could result in a financially weaker Commonwealth, with fewer resources to invest in local telephone infrastructure and operations.

[T]he Application does not provide any meaningful information regarding what will happen to Commonwealth's employees. ... CWA is concerned that some of these savings may occur by reducing the number of employees at Commonwealth, including members of CWA. Citizens is in the process of a call center consolidation, and CWA is particularly concerned about the impact of that consolidation on Commonwealth's Wilkes-Barre call center.

Citizens and Commonwealth have not clearly and unequivocally committed to honoring the collective bargaining agreement with CWA, including all pensions and benefits contained therein.

CWA Protest, ¶¶ 4-7 (emphasis added).

Each of CWA's concerns has been resolved by the Joint Petition for Approval of Unanimous Settlement Agreement (Settlement). Specifically:

- Advanced services deployment: Citizens has committed to enhance the availability of broadband and other advanced services for Commonwealth's customers. Settlement ¶¶ 13.b and 13.c.
- Impacts on service quality: Citizens has agreed to provide service quality reports so that the Pennsylvania Public Utility Commission (Commission) and the government parties can monitor any impacts of the change in ownership on the quality of service received by Commonwealth's customers. Settlement ¶ 13.f.
- Financial effects: Citizens provides assurances that Commonwealth will be insulated from any potential adverse effects on Citizens' credit because (1) Commonwealth will not be permitted to guarantee the debt or credit instruments of Citizens, and (2) Citizens will not be permitted to pledge the assets of Commonwealth to support any Citizens' unregulated or out-of-state operations. Settlement ¶ 13.g.
- Effects on Commonwealth's employees: Citizens has agreed to maintain employment among CWA members at Commonwealth at 95% or more of the current level, except for limited attrition, during the remaining term of the collective bargaining agreement with CWA (which is November 30, 2008). This provides a reasonable transition period during which Citizens can assess its future needs and negotiate any long-term changes with CWA at the time of the next collective bargaining agreement. Settlement ¶ 13.e.
- Wilkes-Barre call center: Citizens has committed to keeping Commonwealth's Wilkes-Barre call center open at least through November 30, 2008. This provides a reasonable transition period during which Citizens can determine how the Commonwealth call center fits into Citizens' long-term plans. Settlement ¶ 13.e.
- Collective bargaining agreement: Citizens has agreed to honor all terms of the existing collective bargaining agreement between Commonwealth and CWA. Settlement ¶ 13.e.

In summary, CWA supports the Settlement because it appropriately resolves the major issues raised in CWA's Protest. With the commitments made by Citizens and Commonwealth in the Settlement, the customers and employees of Commonwealth have received assurances that the acquisition by Citizens (1) will enhance the level and quality of service at Commonwealth; (2) will not adversely affect employment levels or benefits at Commonwealth; (3) will keep the Wilkes-Barre call center open at least through the term of the existing collective bargaining agreement; and (4) will not have an adverse financial impact on Commonwealth. In light of these commitments, CWA submits that the proposed transaction will provide a substantial affirmative benefit to the public. The Commission, therefore, should approve the proposed transaction with the conditions contained in the Settlement.

WHEREFORE, Communications Workers of America respectfully requests the Administrative Law Judge and Pennsylvania Public Utility Commission to approve the proposed transaction subject to all of the terms and conditions of the Joint Petition for Approval of Unanimous Settlement Agreement.

Respectfully submitted,

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Counsel for:  
Communications Workers of America

Dated: January 19, 2007

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>JOINT APPLICATION OF COMMONWEALTH</b>	<b>:</b>	
<b>TELEPHONE COMPANY, CTSI, LLC, AND</b>	<b>:</b>	
<b>CTE TELECOM, LLC d/b/a COMMONWEALTH</b>	<b>:</b>	
<b>LONG DISTANCE COMPANY FOR ALL</b>	<b>:</b>	<b>Docket Nos.</b>
<b>APPROVALS UNDER THE PUBLIC UTILITY</b>	<b>:</b>	<b>A-310800F0010</b>
<b>CODE FOR THE ACQUISITION BY CITIZENS</b>	<b>:</b>	<b>A-311095F0005</b>
<b>COMMUNICATIONS COMPANY OF ALL</b>	<b>:</b>	<b>A-311225F0003</b>
<b>OF THE STOCK OF THE JOINT APPLICANTS’</b>	<b>:</b>	
<b>CORPORATE PARENT, COMMONWEALTH</b>	<b>:</b>	
<b>TELEPHONE ENTERPRISES, INC.</b>	<b>:</b>	

**STATEMENT OF THE OFFICE OF SMALL BUSINESS ADVOCATE  
IN SUPPORT OF THE JOINT PETITION FOR SETTLEMENT**

**I. Introduction**

The Office of Small Business Advocate (“OSBA”) is an agency of the Commonwealth of Pennsylvania authorized by the Small Business Advocate Act (Act 181 of 1988, 73 P.S. §§ 399.41 – 399.50) to represent the interests of small business consumers as a party in proceedings before the Pennsylvania Public Utility Commission (“Commission”).

On September 29, 2006, an Application was filed by Commonwealth Telephone Company (“CTCo”); CTSI, LLC (“CTSI”); and CTE Telecom, LLC d/b/a Commonwealth Long Distance Company (“CLD”), (collectively, the “Joint Applicants”), seeking approval under Section 1102 of the Public Utility Code, 66 Pa. C.S. §1102, and Section 69.901 of the Commission’s Rules of Practice and Procedure, 52 Pa. Code §69.901, of the acquisition of their parent company—Commonwealth Telephone Enterprises, Inc. (“CTE”)—by Citizens Communications Company (“Citizens”). The

OSBA filed a Notice of Intervention on October 13, 2006, and a Protest on October 30, 2006.

## **II. Summary of OSBA's Principal Concerns**

The OSBA filed a Prehearing Memo on November 22, 2006. In its Prehearing Memo, the OSBA identified two major issues of concern:

1. The Proposed Acquisition could allow Citizens to divert revenues from CTE in order to service Citizens' \$990 million debt.
2. Citizens projected \$30 million in synergy savings each year but did not propose to share those savings with ratepayers.

To this point in the proceedings, the OSBA has propounded discovery and has been preparing its Direct Testimony. The OSBA has also actively participated in the negotiations which have led to the filing of the Joint Petition for Settlement ("Settlement"). The OSBA is a signatory to the Settlement.

## **III. Summary of Settlement**

The Settlement sets forth a comprehensive list of issues which were resolved through the negotiation process to address the concerns the OSBA identified in its Prehearing Memo and would have spelled out in more detail in its Direct Testimony. This statement outlines the OSBA's specific reasons for joining the Settlement:

1. The Settlement shares the synergy savings with the residential and business customers of CTCO and Citizens (the five Pennsylvania-located Frontier ILECs), thereby affording "affirmative public benefits" as required by City of York v. Pennsylvania Public Utility Commission, 449 Pa. 136, 141, 295 A.2.d 825, 828 (Pa. 1973). The Joint Application did not propose to flow any merger savings directly through

to CTCo and Citizens' ratepayers. However, pursuant to the terms of the Settlement, the merger savings will be directly shared by small business consumers.

2. The Settlement caps basic local exchange rates for residential and business (R1 and B1) customers in 2007 and 2008 and provides a rate freeze for R-1 and B-1 customers in 2009.

3. The Settlement accelerates the availability of greater bandwidth for faster digital services provided to consumers. Specifically, CTCo agrees to provide bandwidth availability equal to or greater than 3 megabits per second to an aggregate of 88,000 lines within three years of closing this transaction.

4. The Settlement allows consumers to obtain DSL services (digital subscriber line, i.e., internet access and VOIP (voice over internet protocol) access) without also purchasing telephone services from CTCo or Citizens. This two year window for standalone DSL service may increase intermodal competition.

5. The Settlement requires CTCo and Citizens to employ the appropriate level of resources, including workforce, network and investment, necessary to achieve the continuation of quality of service to their existing and prospective Pennsylvania customers.

6. The Settlement requires CTCo and Citizens to notify the Office of Consumer Advocate ("OCA") and the OSBA if for three consecutive months in any one CTCo district or CCC exchange, CTCo or Citizens' service outage repair index falls below 80% restored/repaired within 24 hours. The Settlement further requires CTCo and Citizens, in the event such notification is given, to meet with the OCA and the OSBA to

address actions to be undertaken by CTCo and Citizens in order to remedy the problem or problems.

7. The Settlement does not allow the Joint Applicants to recover any costs of this Transaction from ratepayers, including any associated increase in debt costs and also any costs resulting from implementing the stipulations of the Settlement.

8. From the effective date of the closing of this transaction and continuing for three years, CTCo will not guarantee the debt of Citizens nor will CTCo be able to grant a mortgage or lien for the benefit of Citizens.

By resolving the issues of principal concern to the OSBA, the Settlement enables the OSBA to conserve its resources and avoid the uncertainties inherent in fully litigating those issues.

**WHEREFORE**, the OSBA respectfully requests that the Administrative Law Judge and the Commission approve the Settlement without modification.

Respectfully submitted,

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Date: January 19, 2007

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

In re Joint Application of Commonwealth Telephone	:	
Company, CTSI, LLC, and CTE Telecom, LLC d/b/a	:	
Commonwealth Long Distance Company For All Approvals	:	A-310800F0010
Under The Public Utility Code for the Acquisition By	:	A-311095F0005
Citizens Communications Company of All of the Stock	:	A-311225F0003
of the Joint Applicants' Corporate Parent, Commonwealth	:	
Telephone Enterprises, Inc.	:	

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OFFICE OF CONSUMER ADVOCATE  
STATEMENT IN SUPPORT OF SETTLEMENT

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The Office of Consumer Advocate ("OCA"), one of the signatories to the Joint Petition For Approval Of Unanimous Settlement Agreement ("Settlement") in the above-referenced matter, recommends that the Commission find the Settlement to be in the public interest and approve the Settlement for the following reasons.

**I. INTRODUCTION AND BACKGROUND**

The Joint Applicants are a large Pennsylvania incumbent local exchange carrier (LEC) and its affiliated CLEC and long distance carrier and Citizens Communications Company (Citizens) which operates five local exchange companies in Pennsylvania through its Frontier affiliate. Given the number of Pennsylvania utility consumers that would be affected by this acquisition, the OCA participated here seeking to ensure that Citizens, the acquiring company, is able to meet the needs of Commonwealth's Pennsylvania customers, and to provide substantial

affirmative benefit in support of the proposed transaction.

On September 29, 2006, Commonwealth Telephone Company (CTCo), CTSI and Commonwealth Long Distance (CLD) filed the above-referenced Application (Joint Application) requesting the issuance of a certificate of public convenience pursuant to a September 17, 2006 Agreement and Plan of Merger (“Merger Agreement”) proposing that Citizens acquire the stock of Commonwealth Telephone Enterprises, Inc. (CTE) and, indirectly, the stock of the Joint Applicants. Under this proposal, the Joint Applicants’ corporate parent, CTE, would become a wholly-owned, direct subsidiary of Citizens.

Commission approval of this type of transaction is required under Commission regulations and Pennsylvania law. The Commission has issued a Policy Statement applying the certification requirements of 66 Pa. C.S. §1102(a)(3) where a stock transaction or series of stock transactions results in a change of control of a public utility regardless of ownership tier. 66 Pa. C.S. §1102.

On October 14, 2006, the Commission published notice of the Joint Application in the *Pennsylvania Bulletin* which required protests and petitions to intervene to be filed on or before October 30, 2006. 36 Pa. B. 6355.

On October 30, 2006, the OCA and the Office of Small Business Advocate (“OSBA”) filed protests. On November 2, 2006, the Office of Trial Staff (“OTS”) filed an Entry of Appearance. The Communications Workers of America (“CWA”), Blue Ridge Digital Phone Company (“Blue Ridge”), Sprint Communications Company LP (“Sprint”), the Broadband Cable Association of Pennsylvania (“BCAP”) and RCN Corporation and RCN Telecom Services, Inc. (“RCN”) filed protests and/or interventions to the Joint Application. Citizens also filed a Petition to Intervene on October 30, 2006.

On November 10, 2006, the Joint Applicants and Citizens distributed the Direct Testimonies of Scott Burnside, Senior Vice President of Regulatory Affairs for Commonwealth Telephone Enterprises, Inc.; and Daniel McCarthy, Executive Vice President and Chief Operating Officer of Citizens Communications Company to the parties.

On November 10, 2006, the Joint Applicants and Citizens filed Joint Answers and Preliminary Objections addressed to the Protests and Petitions to Intervene of Blue Ridge Digital Phone Company, Sprint Communications Company L.P., the Broadband Cable Association of Pennsylvania, RCN Corporation, and RCN Telecom Services, Inc (“CLECs”). Also on that date, the Joint Applicants filed a Joint Answer and Preliminary Objections to the Protest of the CWA.

On November 13, 2006, Administrative Law Judge (ALJ) Susan D. Colwell issued a Prehearing Conference Order. On November 30, 2006, ALJ Colwell issued a Scheduling Order setting the dates for the submission of testimony, the holding of hearings, and the submittal of briefs.

On November 20, 2006, Answers to the Joint Applicant’s Preliminary Objections were filed by the CLECs. CWA also filed its Answer on November 20, 2006. On November 20, 2006, the Joint Applicants submitted a letter stating that they did not oppose the participation of the OCA, OSBA and OTS.

On December 14, 2006, ALJ Colwell issued an Initial Decision, along with accompanying Orders disposing of the Joint Applicants’ Preliminary Objections. The Initial Decision and Orders dismissed the protests of RCN Corporation and the Broadband Cable Association, but denied the Preliminary Objections as they related to the CWA and the remaining CLECs, Sprint, RCN and Blue Ridge.

On December 21, 2006 the Joint Applicants and Citizens filed a Motion for a Protective Order, to which RCN Telecom Services, Inc. filed an Answer on December 22, 2006. The Joint Applicants filed a response the RCN Telecom Services, Inc.'s Answer on December 29, 2006.

On January 9, 2007, Sprint Communications Company, L.P. moved for leave to withdraw its Petition to Intervene and gave notice of the withdrawal of its protest. On January 12, 2007, Blue Ridge Digital Phone Company submitted a Petition for Leave to Withdraw its Intervention and gave notice of the withdrawal of its protest. RCN Telecom Services, Inc. similarly submitted a Petition for Leave to Withdraw its Intervention and gave notice of the withdrawal of its protest on January 17, 2007.

On January 19, 2007, the Parties submitted a unanimous settlement for approval by ALJ Colwell and the Commission.

## **II. TERMS AND CONDITIONS OF SETTLEMENT AGREEMENT**

In its Protest, the OCA discussed how it sought to ensure that the proposed transaction would provide substantial affirmative benefit to Pennsylvania consumers as required by law – specifically, sections 1102 and 1103 of the Public Utility Code, section 69.901 of the Commission's regulations, 52 Pa. Code § 69.901, and other applicable precedent. That is, to obtain a certificate of public convenience in an acquisition or merger proceeding, applicants have the burden of proving by a preponderance of the evidence that a transfer of control is in the public interest. The Courts of Pennsylvania have held that applicants seeking approval under these provisions of the Code must demonstrate by a preponderance of the evidence that the transaction will affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way. *See City of York v. Pa. Pub. Util. Comm'n*, 449 Pa. 136, 295 A.2d 825 (1972); *Middletown Twp. v. Pa. PUC*,

482 A.2d 674, 682 (Commw. Ct. 1984). *See also*, Re: DQE, Inc., 88 Pa. PUC 467, 474 (1998); Newtown Artesian Water Company, 76 Pa. PUC 260, 262 (1992). To ensure that applications such as this are in the “public interest,” the Commission may impose conditions on its granting of the certificate of public convenience. Re: DQE, Inc., 88 Pa. PUC at 474.

Specifically, the OCA Protest raised the following issues regarding how the proposed transaction may affect the interest of affected consumers. The OCA will discuss in detail how the Settlement addresses each of these concerns.

**1. Rate Reductions**

The OCA Protest raised issues regarding whether the proposed transaction would benefit affected consumers in terms of rate reductions. The OCA protest noted:

- Commonwealth fails to discuss how any part of the anticipated synergy savings will flow through to Commonwealth’s or Citizens’ Frontier customers in the form of lower rates or rate consolidations in adjoining service areas

OCA Protest at 7. This aspect of the proposed transaction was a major concern for the OCA.

The Settlement addresses this concern as follows:

Rate Caps/Freezes – The exercise by CTCo and Citizens Communications Company’s five Pennsylvania-located Frontier ILECs (CCC) of their price cap formula is restricted during the next three years (2007 (the current year), and the 2008 and 2009 filings following) as follows:

- i. 2007 – Increase in monthly charge for residential primary limited to \$.90 and for B-1 to \$.50.
- ii. 2008 – Increase in monthly charge for residential primary limited to \$.50 and for B-1 to \$.25.
- iii. 2009 – No increases in residential primary or B-1 rates.

In no event, however, will R-1 rates for CTCo or any CCC company exceed \$18.00 during these periods. CTCo and CCC may request increases in non-access line rates. CTCo and CCC shall not be permitted to bank any rate increases which they forego in years 2007, 2008 and 2009. Notwithstanding any of the foregoing, CTCo and CCC may increase residential and business basic, unbundled local dial

tone rates beyond these limitations as a result of generic federal and state required changes to access charges and/or universal service funding or an exogenous event as defined in CTC's and CCC's Chapter 30 Plan.

Settlement at ¶ 13.a. The OCA points out that the Citizens companies affected by the proposed transaction are the Frontier Communications Companies of Breezewood, Canton, Lakewood, Oswayo River, and Pennsylvania. This is a significant benefit to all affected residential and business consumers. These provisions provide for sharply lower rate increases from those otherwise permitted over the next three years under the Joint Applicants' existing Chapter 30 plans. While this provision does allow for some limited exceptions, the OCA submits that a \$1.40 rate increase limitation over three years represents an affirmative benefit to the residential consumers affected by the proposed transaction. Moreover, the Settlement reinforces the overriding \$18.00 residential rate cap, so that for companies approaching the \$18.00 cap the maximum increase of \$1.40 will be further reduced.

## **2. Network Modernization**

The OCA Protest raised issues concerning network modernization:

- While Commonwealth discusses enhanced access to advanced services at page 11 of the Joint Application, Commonwealth makes no commitment to provide such services beyond that contained in its existing Chapter 30 Plan, or provide information on how the new company will meet its Chapter 30 obligations.

OCA Protest at 7. The Settlement addresses this concern as follows:

Bandwidth Availability - CTC's agrees to provide bandwidth availability equal to or greater than 3 megabits per second in the downstream direction to a total of at least 88,000 lines within three years of closing of the Transaction.

Settlement at ¶ 13.c. This represents a rough doubling of the present number lines to which this high-speed service of this type will be available, and extends well beyond CTC's Chapter 30 plan obligations. The OCA submits that this represents an affirmative benefit to the consumers that may be affected by the proposed transaction.

### 3. Corporate Finance

The OCA protest also raised the following issues regarding the Joint Applicants' proposed capital structure and financial plans:

- Joint Applicants' proposed capital structure and financial plans are not clearly discussed or explained in the filing
- OCA understands that Citizens may assume a substantial amount of debt (up to 990 million dollars) to finance the proposed stock acquisition, and the treatment of this debt is not clearly discussed or explained in the filing
- It is unclear how the proposed transaction may impact Commonwealth's and/or Citizens' credit ratings
- Dividends and other financial arrangements between Commonwealth and its new parent are unclear
- It is further unclear whether Commonwealth will secure the new debt of its parent, and how this may affect the security of the assets of the operating company

OCA Protest at 7. The Settlement addresses these concerns as follows:

Debt and Transaction Costs. The Joint Applicants will not seek to recover in rates any costs of the Transaction, including any associated increase in debt costs. In addition, the Joint Applicants agree not to seek recovery of any costs resulting from implementing the stipulations set forth above. After closing and for a period of three (3) years following closing of the Transaction, CTCo shall not:

- i. Guarantee the debt or credit instruments of Citizens Communications Company or any affiliate not regulated by the Commission; or
- ii. Grant a mortgage or other lien or otherwise pledge as security for repayment of the principal or interest of any loan or credit instrument of Citizens Communications Company or any affiliate not regulated by the Commission any property used and useful in providing utility service to the public subject to the Commission's jurisdiction.

Settlement at ¶ 13.g. The OCA submits that these provisions provide protections against negative consumer impacts of financial changes at the parent company level. These conditions

do this by working to isolate the local operating company from cost, financing, and credit changes that may impact the parent company as a result of the proposed transaction. The OCA submits that this represents an affirmative benefit to the consumers that may be affected by the proposed transaction.

#### **4. Employment**

The OCA protest also raised the following issues regarding how the proposed transaction may impact employment at the newly acquired company.

- OCA understands that Citizens seeks to achieve approximately \$20 million in wage synergy savings from the Commonwealth companies. Commonwealth fails to discuss this aspect of the proposed transaction and fails to discuss how this may affect employment levels and the pensions of its Pennsylvania employees, as well as the employment levels and pensions of employees of the Pennsylvania Frontier Companies

OCA Protest at 7. The Settlement addresses these concerns as follows:

Employment - CTCO and CCC will continue to employ the appropriate level of resources, including workforce, employee benefits, network and investment, necessary to achieve the continuation of quality service to their existing and prospective Pennsylvania customers while remaining competitive. CTCO shall maintain the level of CWA-represented positions through the end of the current contract period (ending 11/30/08) at a minimum of 95% of the current level except for bona fide attrition. As part of this job level guarantee, the CTCO call center shall remain open during this period. All terms of existing bargaining agreements will be honored.

Settlement at ¶ 13.e. The OCA submits that these provisions work to provide a broad range of employee protections, particularly in regard to maintaining and developing the telephone network in the affected service territories. These provisions also work to assure customers affected by the proposed transaction that Citizens will attract and deploy a level of human resources commensurate with its obligation to provide safe and adequate service to all its Pennsylvania customers. The OCA submits that this represents an affirmative benefit to the consumers that may be affected by the proposed transaction.

## 5. Service Quality

The OCA protest raised issues regarding how the proposed transaction may impact the high quality of service currently provided by CTCo. The OCA Protest provides:

- It is further unclear whether Commonwealth will maintain its present level of service quality, and adequately fund its operations, or have the resources available to improve its service quality.

OCA Protest at 8. . The Settlement addresses these concerns as follows:

Service Quality Reporting - CTCo and CCC will provide the following reports to the OCA, OSBA and OTS for calendar years 2006, 2007, and 2008. The OCA, OSBA and OTS agree that any information provided pursuant to this Paragraph will be treated in a confidential manner and agree not to use or release such information for any purpose. Nonetheless, if the OCA, OSBA or OTS believe that CTCo or CCC service quality has declined such that it is necessary to bring this data to the attention of the Commission, such party may file such data under protective restrictions and may seek to have it publicly disclosed pursuant to 52 Pa. Code §5.423. A party seeking to notify the Commission will attempt to resolve any service concerns with CTCo or CCC prior to taking any action at the Commission pursuant to this Paragraph.

1. Annually -- CTCo and CCC will report the service metrics stipulated below in the month of June following the calendar year reporting period.
  - i. Trouble report rate (measured per 100 access lines);
  - ii. Number of missed appointments;
  - iii. Average interval (number of days) between a request for new basic service and installation. Metrics will be based on 52 Pa. Code § 63.58 rules regarding installation of service. CTCo and CCC will provide an annual average interval of days for installation of residential and single line business service and an annual average interval of days for installation of non-primary service orders.
  - iv. Copies of the annual reports filed with the Commission's Bureau of Consumer services.
2. As Required -- CTCo and CCC agree to advise the OCA and OSBA if either the CTCo or CCC service repair outage index falls below 80% restored/repaired within 24 hours for reasons not attributable to customer requests for a later time: (a) in any month across either the CTCo and CCC systems; and (b) for three consecutive months in any one CTCo district or CCC exchange. In the event of a notification under this section, CTCo and CCC commit to meeting with the OCA and OSBA to discuss and address possible remedies or actions to be taken.

Settlement at ¶ 13.f. The OCA submits that these provisions work to provide a broad range of quality of service protections, particularly regarding CTCo's traditional level of network service. These provisions are a proactive solution to the OCA's quality of service concerns and assure that the public advocates and Citizens will work together to address any quality of service issues that may arise. The OCA submits that this represents an affirmative benefit to the consumers that may be affected by the proposed transaction.

## **6. Lifeline**

While the OCA protest did not expressly raise issues related to lifeline service, the OCA did pursue lifeline issues in its participation in this proceeding. The OCA is concerned that all qualified Pennsylvania telephone consumers, or those likely to be qualified consumers of regulated telecommunications services have access to lifeline programs. In an effort to provide substantial affirmative benefits to Pennsylvania consumers, CTCo and Citizens offered to promote lifeline services via the following consumer outreach program. The Settlement provides:

Lifeline – CTCo and CCC will produce and distribute at their expense a Lifeline brochure explaining Lifeline and explaining how to apply for lifeline by telephone. The companies will provide these brochures to:

- i. Counties - County assistance offices and County agencies in their territories. The Companies will agree to provide those offices with sufficient brochures for a three year period following closing of the Transaction.
- ii. Local Assistance Agencies and Organizations, whether government affiliated or not, such as United Way and Meals on Wheels. Within 30 days of Commission approval of the Joint Application, the OCA, OSBA, OTS CTCo and Citizens will work to develop a list of local assistance agencies and organizations that should be supplied with these materials for the three year period following closing of the Transaction.

Settlement at 13.d. This provision provides the public advocates and the Joint Applicants with the opportunity to pursue an aggressive lifeline outreach program in the CTCo and Citizens service territories. The OCA submits that this represents an affirmative benefit to the consumers that may be affected by the proposed transaction.

#### **7. Stand Alone DSL**

Other than network modernization issues, the OCA protest did not expressly raise issues related to high-speed internet service provisioning. However, the OCA pursued this issue in its participation in this proceeding. The OCA supports access to high-speed internet services in an unbundled fashion, i.e., without the need to purchase other services in conjunction with high-speed internet service. To address these concerns, CTCo and Citizens offer the following terms and conditions:

DSL - CTCo and CCC agree to provide stand-alone high speed internet service (DSL and ISP service) to their customers for a period of two years from the date of Commission approval of the Joint Application. Nothing in this Agreement shall restrict or limit CTCo's and CCC's pricing flexibility on DSL and DSL-related services

Settlement at ¶ 13.b. The provision of stand-alone DSL service provides important access to competitive telecommunications services and to high-speed internet services. The OCA submits that this represents an affirmative benefit to the consumers that may be affected by the proposed transaction. The provision of stand-alone DSL service provides important access to competitive telecommunications services and to high-speed information services.

### **III. SUBSTANTIAL AFFIRMATIVE PUBLIC BENEFIT**

The OCA submits that when viewed as a whole, the Joint Application, as modified by the terms and conditions of the Settlement, not only addresses all the issues raised by the OCA, but

also provides for substantial affirmative public benefit in this matter. Therefore, the OCA submits that with the approval of the Settlement, the proposed transaction is in the public interest. For these reasons, the OCA submits that the Commission should find the Settlement to be in the public interest and to approve the Settlement without modification.

### III. CONCLUSION

As a whole, the commitments contained in the Settlement provide substantial affirmative public benefit. The OCA submits that the Commission should find the Settlement to be in the public interest and should approve the Settlement without modification. For the foregoing reasons, the OCA respectfully requests that the Commission approve the Joint Application, as modified by the terms and conditions of the Joint Petition For Approval Of Unanimous Settlement Agreement, as being in the public interest.

Respectfully submitted,

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Joel H. Cheskis  
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Dated: January 19, 2007  
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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Application of Commonwealth	:	
Telephone Company, CTSI, LLC, and CTE	:	A-310800F0010
Telecom, LLC d/b/a Commonwealth Long	:	A-311095F0005
Distance Company for All Approvals	:	A-311225F0003
Under the Public Utility Code for the	:	
Acquisition By Citizens Communications	:	
Company of All of the Stock of the	:	
Joint Applicants' Corporate Parent,	:	
Commonwealth Telephone Enterprises, Inc.	:	

**INITIAL DECISION REGARDING THE PRELIMINARY OBJECTIONS OF  
COMMONWEALTH TELEPHONE COMPANY, CTSI, LLC AND CTE TELECOM,  
LLC D/B/A COMMONWEALTH LONG DISTANCE TO DISMISS PROTEST AND  
PETITION TO INTERVENE OF THE BROADBAND CABLE ASSOCIATION OF  
PENNSYLVANIA**

Before  
Susan D. Colwell  
Administrative Law Judge

HISTORY OF THE PROCEEDING

On September 29, 2006, Commonwealth Telephone Company, CTSI, LLC, and CTE Telecom, LLC d/b/a Commonwealth Long Distance (Commonwealth, CTCo, or Joint Applicants) filed an Application for approvals necessary under the Public Utility Code for the Joint Applicants' parent company, Commonwealth Telephone Enterprises, Inc., to be acquired by Citizens Communications Company (Application). The Application was published in the *Pennsylvania Bulletin* October 14, 2006, 36 Pa. B. 6355, with a protest due date of October 30, 2006.

On October 30, 2006, a Protest and Petition to Intervene was filed by each of the following: RCN Corporation and RCN Telecom Services, Inc. (RCN); Sprint Communications Company L.P. (Sprint); Blue Ridge Digital Phone Company (Blue Ridge); and, Broadband

Cable Association of Pennsylvania (BCAP). A Protest and Preliminary Objections were filed by the Communications Workers of America (CWA), but the Preliminary Objections were withdrawn by letter dated November 13, 2006. A Protest and Public Statement was filed by both the Office of Small Business Advocate (OSBA) and the Office of Consumer Advocate (OCA), and a Notice of Appearance was filed on behalf of the Office of Trial Staff (OTS). Citizens Communications Company (Citizens) filed a Petition to Intervene.

On November 9, 2006, Joint Applicants filed an Answer to the Preliminary Objections of CWA.

On November 8, 2006, a Notice of Prehearing Conference was issued which set the prehearing conference for November 29, 2006 in Harrisburg.

On November 10, 2006, Joint Applicants filed Preliminary Objections to Dismiss Portions of the Protest and to Limit Participation of the CWA, and joined by Citizens, a separate set of Preliminary Objections to dismiss Protests and Petitions to Intervene of Blue Ridge, Sprint, BCAP and RCN.

On November 13, 2006, I issued a prehearing order which set forth some of the procedural requirements of a hearing before the Commission and required the parties to submit a prehearing memoranda in accordance with the regulations.

On November 20, 2006, CWA, Blue Ridge, Sprint, BCAP and RCN filed Answers to the Joint Applicants' Preliminary Objections.

On November 20, 2006, the Joint Applicants filed letters indicating that they did not oppose the participation of the OCA, OSBA and OTS.

All parties of record filed Prehearing Memos and the following were represented at the prehearing conference: for Joint Applicants, Norman J. Kennard, Esq.; for OSBA, Steven Gray, Esq., and Lauren Lepkoski, Esq.; for OCA, Shaun Sparks, Esq. and Joel Cheskis, Esq.; for OTS, Robert V. Eckenrod, Esq.; for Citizens, Lillian S. Harris, Esq.; for BCAP and Blue Ridge,

Pamela Polacek, Esq.; for CWA, Scott J. Rubin, Esq.; for Sprint, Jennifer Duane, Esq., and for RCN, John F. Povilaitis, Esq., and Matthew A. Totino, Esq.

A separate Order has been issued which sets a litigation schedule for the parties to follow, and disposes of uncontested motions. Another Order has been issued to dispose of the Preliminary Objections of the Joint Applicants to Limit Participation of the Communications Workers of America. A third Order addresses the Preliminary Objections of the Joint Applicants and Citizens to Dismiss Protests and Petitions to Intervene of Blue Ridge Digital Phone Company, Sprint Communications Company LP and RCN Telecom Services, Inc. This Initial Decision grants the Preliminary Objections of the Joint Applicants to the Protests and Petitions to Intervene filed by the Broadband Cable Association of Pennsylvania (BCAP) and the RCN Corporation.

#### FINDINGS OF FACT

1. Joint Applicants are Commonwealth Telephone Company, CTSI, LLC, and CTE Telecom, LLC d/b/a Commonwealth Long Distance Company.
2. On September 29, 2006, Commonwealth Telephone Company, CTSI, LLC, and CTE Telecom, LLC d/b/a Commonwealth Long Distance (Commonwealth or Joint Applicants) filed an Application for approvals necessary under the Public Utility Code for the Joint Applicants' parent company, Commonwealth Telephone Enterprises, Inc., to be acquired by Citizens Communications Company (Application).
3. The Application was published in the Pennsylvania Bulletin October 14, 2006, 36 Pa. B. 6355, with a protest due date of October 30, 2006.
4. On October 30, 2006, a Protest and Petition to Intervene was filed by each of the following: RCN Corporation and RCN Telecom Services, Inc. (RCN); Sprint Communications Company L.P. (Sprint); Blue Ridge Digital Phone Company (Blue Ridge); and, Broadband Cable Association of Pennsylvania (BCAP).

5. A Protest and Preliminary Objections were filed by the Communications Workers of America (CWA), but the Preliminary Objections were withdrawn by letter dated November 13, 2006.

6. A Protest and Public Statement was filed by both the Office of Small Business Advocate (OSBA) and the Office of Consumer Advocate (OCA), and a Notice of Appearance was filed on behalf of the Office of Trial Staff (OTS).

7. Citizens Communications Company (Citizens) filed a Petition to Intervene.

8. On November 9, 2006, Joint Applicants filed an Answer to the Preliminary Objections of CWA.

9. On November 8, 2006, a Notice of Prehearing Conference was issued which set the prehearing conference for November 29, 2006 in Harrisburg.

10. On November 10, 2006, Joint Applicants filed Preliminary Objections to Dismiss Portions of the Protest and to Limit Participation of the CWA, and joined by Citizens, a separate set of Preliminary Objections to dismiss Protests and Petitions to Intervene of Blue Ridge, Sprint, BCAP and RCN.

11. On November 13, 2006, I issued a prehearing order which set forth some of the procedural requirements of a hearing before the Commission and required the parties to submit a prehearing memoranda in accordance with the regulations.

12. On November 20, 2006, CWA, Blue Ridge, Sprint, BCAP and RCN filed Answers to the Joint Applicants' Preliminary Objections.

## DISCUSSION

Joint Applicants and Citizens filed Preliminary Objections seeking to dismiss the petitions to intervene and protests of five entities: Blue Ridge, Sprint, BCAP, RCN Telecom Services, Inc. and RCN Corporation. The Preliminary Objections are denied by a separate Order regarding Blue Ridge, Sprint and RCN Telecom Services, Inc. This Initial Decision grants the Preliminary Objections against BCAP and RCN Corporation and denies their Petitions to Intervene and Protests.

Parties may file preliminary objections:

### **§ 5.101. Preliminary objections.**

(a) *Grounds.* Preliminary objections are available to parties and may be filed in response to a pleading except motions and prior preliminary objections. Preliminary objections must be accompanied by a notice to plead, must state specifically the legal and factual grounds relied upon and be limited to the following:

- (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
- (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
- (3) Insufficient specificity of a pleading.
- (4) Legal insufficiency of a pleading.
- (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.
- (6) Pendency of a prior proceeding or agreement for alternative dispute resolution.

52 Pa. Code § 5.101(a).

In deciding the preliminary objections, the Commission must determine whether, based on well-pleaded factual averments of the Petitioners, recovery or relief is possible. *Dept. of Auditor General, et al v. SERS, et al.*, 836 A.2d 1053, 1064 (Pa. Cmwlth. 2003), 2003 Pa. Commw. LEXIS 849; *P.J.S. v. Pa. State Ethics Comm'n*, 669 A.2d 1105 (Pa. Cmwlth. 1996) 1996 Pa. Commw. LEXIS 11. Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. *Boyd v. Ward*, 802 A.2d 705 (Pa. Cmwlth. 2002) 2002 Pa. Commw. LEXIS 580. All of the non-moving party's averments in the complaint must

be viewed as true for purposes of deciding the preliminary objections, and only those facts specifically admitted may be considered against the non-moving party. *Ridge v. State Employees' Retirement Board*, 690 A.2d 1312 (Pa. Cmwlth. 1997) 1997 Pa. Commw. LEXIS 148.

In order to have standing, a party must have an interest which is substantial, direct, and immediate:

A "substantial" interest is an interest in the outcome of the litigation which surpasses the common interest in procuring obedience to the law. A "direct" interest requires a showing that the matter complained of caused harm to the party's interest. An "immediate interest involves the nature of the causal connection between the action complained of and the injury to the party challenging it and is shown where the interest the party seeks to protect is within the zone of interest sought to be protected by the statutes or the constitutional guarantee in question. *George v. Pa. Publ. Util. Comm'n*, 735 A.2d 1282, 1286 (Pa. Cmwlth. Ct. 1999).

Joint Applicants allege<sup>48</sup> that the CLEC Protestants do not have standing to participate in this proceeding, stating that all of them are currently seeking CLEC (competitive local exchange carrier) status in CTC's territory but none have been granted it. This was true at the time of the filing, but since then, Sprint's application has been granted, and due to the pending applications for authority to compete, intervention has been granted to Sprint, Blue Ridge and RCN Telecom in another order.

BCAP and RCN Corporation, however, present a different set of facts.

Commission regulations provide:

**§ 5.72. Eligibility to intervene.**

(a) *Persons*. A petition to intervene may be filed by a person claiming a right to intervene or an interest of such nature that intervention is necessary or appropriate to the administration of the statute under which the proceeding is brought. The right or interest may be one of the following:

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<sup>48</sup> The Preliminary Objections are presented in one document which refers to Sprint, Blue Ridge, RCN Telecom Services Inc., RCN Corporation and BCAP as "CLEC Protestants" and does not distinguish between BCAP and the other entities. BCAP and RCN Corporation are lumped with the others as "CLECs" but there is no indication in the pleadings that either BCAP or RCN Corporation has that status.

- (1) A right conferred by statute of the United States or of the Commonwealth.
- (2) An interest which may be directly affected and which is not adequately represented by existing participants, and as to which the petitioner may be bound by the action of the Commission in the proceeding.
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In merger and acquisition cases, where it is the action for which approval is sought that may or may not result in harm to the protestants, there can be no existing, actual harm until the transaction has occurred. This is analogous to motor carrier cases in which approval is sought for new or additional authority, and protests may be filed against the transaction based on the potential harm.

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RCN Corporation and RCN Telecom Services are lumped together in the pleadings, but as two distinct entities, they should be treated differently. RCN Telecom has standing, but there is no indication in the pleadings that RCN Corporation is a competitor, potential competitor, or customer of the Joint Applicants or Citizens. Rather, it is explained as only as the parent company of RCN Telecom Services, Inc. As such, it will not be permitted to participate independently and the Preliminary Objection to its participation will be granted.

BCAP states that its standing to protest and intervene is established by its status as an association of both potential and current competitors of one or more of the Joint Applicants, and by the demonstration of the harm that may occur as a result of the approval of the acquisition. BCAP Answer, p. 2. BCAP is “an association of Pennsylvania cable television operators, equipment suppliers, programmers and other allied companies. Its members collectively provide cable service to approximately 3.8 million homes in Pennsylvania. An increasing number of BCAP members are providing voice service offerings to customers in Pennsylvania using PUC-certificated telephone affiliates and other non-jurisdictional arrangements. Additional BCAP members are interested in providing IP-enabled digital voice services to consumers in Pennsylvania. In addition to seeking to compete with Incumbent Local Exchange Carriers (“ILECs”) such as CTCo regarding video programming and high speed data service options, BCAP members have affiliates that are certificated to provide CLEC service in Pennsylvania in potential competition with CTSI. Affiliates of other BCAP members are providing and/or seeking to provide voice services in competition with CTCo. As current and potential competitors to CTCo, CTSI and the Frontier companies already owned by Citizens in

Pennsylvania for data, video and voice services, BCAP's members have a direct interest in this proceeding that is not represented by any other party." BCAP Answer, pp. 2-3.

Joint Applicants and Citizens refer to the application of Service Electric for CLEC status,<sup>49</sup> and BCAP explained that Service Electric Telephone is a partially-owned subsidiary of a BCAP member. Service Electric is certificated in the CTCo territory. BCAP Answer p. 5. Both Joint Applicants and BCAP seem to rely on this "partially-owned subsidiary of a BCAP member" relationship to establish BCAP interest in this proceeding.

The Commission has addressed participation by associations. In *Appalachian Gas Sales, Inc. v. Philadelphia Electric Company*, 67 Pa. PUC 246 (1988), the Appalachian Gas Sales, Inc. (AGS), had filed a Complaint on its own behalf although it had acted as agent for two of PECO's gas customers. The Commission found that the customers would have had standing to file complaints, and that AGS could establish its own independent cause of action against Respondent because AGS was also a marketer of gas, as well as a customer of PECO, and thus was affected by the terms of the PECO tariff.

In *Pa. Publ. Util. Comm'n v. PG&W, et al.*, Docket Nos. R-922169, R-922169C001, and R-922169C002 (1992 Pa. PUC LEXIS 113)(Order Issued October 29, 1992), the Commission answered the specific question: "Do independent natural gas producers and marketers have standing to intervene in a proceeding involving the tariff filing of a regulated gas utility?" The Commission found that the regulatory scheme of the Commission had changed considerably since prior cases had been issued, and that the Commission's mandate to require gas transportation tariffs resulted in the transportation of natural gas to be in the public interest. Therefore, the association representing these interests was afforded standing. The holding distinguished the AGS case as well as *Pennsylvania Natural Gas Association v. T.W. Phillips Gas & Oil Co.*, Docket Nos. C-902902, C-913239 (Order entered December 20, 1991). The relevant paragraph reads:

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<sup>49</sup> *Joint Petition of Commonwealth Telephone Company and Service Electric Telephone Company, LLC for Approval of a Negotiated Interconnection Agreement under Section 252(e) of the Telecommunications Act of 1996*, Docket No. A-310651F7003 (Opinion and Order entered August 19, 2004).

Returning to the case at hand, we observe that to the extent the gas marketer or broker asserts an interest that is purely competitive, *Pa. Petroleum Association* would carry more force and would be dispositive of the standing question. Where, the marketer or broker asserts an interest grounded in obtaining access to facilities which are monopolistic in nature and in their practical effect, we find a sufficient basis on which to distinguish *Pa. Petroleum Association*.<sup>50</sup> *Pa. Publ. Util. Comm'n v. PG&W*, 1992 Pa. PUC LEXIS 113 at \*12.

The Commission Order's reference to *Pa. Petroleum Association* is especially relevant here. While the *PG&W* decision highlights the Commission's readiness to permit those entities which are seeking access to the facilities which are monopolistic in nature to participate in Commission proceedings, *Pa. Petroleum Association* is squarely on point for those associations which do not represent entities seeking access to those facilities. The interest that BCAP expresses is not just competition, it is *uncertificated competition*. BCAP states that its members *have affiliates* which are certificated, and seeks to rely on that tenuous relationship to support a finding of standing here. BCAP states that it "has an interest in ensuring on behalf of its member that CTCo fulfills its promise of enhanced treatment of CLECs . . . . In addition, other BCAP members may consider entering the CTCo territory . . . ." BCAP Answer, p. 6.

BCAP states that it "maintains an interest in this proceeding as an association consisting of current competitors with CTCo, as well as potential competitors with CTCo and its potential affiliates. However, the Commission has stated that "we observe that to the extent the gas marketer or broker asserts an interest that is purely competitive, *Pa. Petroleum Association* would carry more force and would be dispositive of the standing question. " See *Pa. Publ. Util. Comm'n v. PG&W*, *supra*. Under *Pa. Petroleum Association*, BCAP has no standing.

Although it is likely that some of the *affiliates* of some of the members would have standing, the BCAP pleadings do not claim that the association itself is comprised of entities which would have standing, either as existing CLECs in the CTCo or CTSI territory, or as customers. The members may be competing, but that competition occurs outside the certification granted by the Commission. The competition is in cable telephony, which is not

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<sup>50</sup> *Pennsylvania Petroleum Association v. Pennsylvania Power & Light Company*, 377 A.2d 1279 (Pa. Cmwlth. Ct. 1977), *aff'd* 488 Pa. 308, 412 A.2d 522 (1990)(*Pa. Petroleum Association*).

currently regulated. Therefore, the association cannot have standing either in its own right or on behalf of the members in a proceeding before this Commission to determine whether to approve the acquisition of the Joint Applicants' stock by Citizens Communications Company.

Accordingly, the Petition to Intervene of the Broadband Cable Association of Pennsylvania will be denied, and its Protest dismissed for lack of standing.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objection of Commonwealth Telephone Company, CTSI, LLC, and CTE Telecom, LLC d/b/a Commonwealth Long Distance Company and Citizens Communications Company to Dismiss Protest and Petition to Intervene of the Broadband Cable Association of Pennsylvania is granted.

2. That the Petition to Intervene and Protest of the Broadband Cable Association of Pennsylvania are dismissed.

3. That the Preliminary Objection of Commonwealth Telephone Company, CTSI, LLC, and CTE Telecom, LLC d/b/a Commonwealth Long Distance Company and Citizens Communications Company to Dismiss Protest and Petition to Intervene of the RCN Corporation is granted.

4. That the Protest and Petition to Intervene of RCN Corporation are dismissed.

Dated: December 14, 2006

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Susan D. Colwell  
Administrative Law Judge

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Application of Commonwealth	:	
Telephone Company, CTSI, LLC, and CTE	:	A-310800F0010
Telecom, LLC d/b/a Commonwealth Long	:	A-311095F0005
Distance Company for All Approvals	:	A-311225F0003
Under the Public Utility Code for the	:	
Acquisition By Citizens Communications	:	
Company of All of the Stock of the	:	
Joint Applicants' Corporate Parent,	:	
Commonwealth Telephone Enterprises, Inc.	:	

**INITIAL DECISION REGARDING THE PRELIMINARY OBJECTIONS OF  
COMMONWEALTH TELEPHONE COMPANY, CTSI, LLC AND CTE TELECOM,  
LLC D/B/A COMMONWEALTH LONG DISTANCE TO DISMISS PROTEST AND  
PETITION TO INTERVENE OF THE BROADBAND CABLE ASSOCIATION OF  
PENNSYLVANIA**

Before  
Susan D. Colwell  
Administrative Law Judge

HISTORY OF THE PROCEEDING

On September 29, 2006, Commonwealth Telephone Company, CTSI, LLC, and CTE Telecom, LLC d/b/a Commonwealth Long Distance (Commonwealth, CTCo, or Joint Applicants) filed an Application for approvals necessary under the Public Utility Code for the Joint Applicants' parent company, Commonwealth Telephone Enterprises, Inc., to be acquired by Citizens Communications Company (Application). The Application was published in the *Pennsylvania Bulletin* October 14, 2006, 36 Pa. B. 6355, with a protest due date of October 30, 2006.

On October 30, 2006, a Protest and Petition to Intervene was filed by each of the following: RCN Corporation and RCN Telecom Services, Inc. (RCN); Sprint Communications Company L.P. (Sprint); Blue Ridge Digital Phone Company (Blue Ridge); and, Broadband

Cable Association of Pennsylvania (BCAP). A Protest and Preliminary Objections were filed by the Communications Workers of America (CWA), but the Preliminary Objections were withdrawn by letter dated November 13, 2006. A Protest and Public Statement was filed by both the Office of Small Business Advocate (OSBA) and the Office of Consumer Advocate (OCA), and a Notice of Appearance was filed on behalf of the Office of Trial Staff (OTS). Citizens Communications Company (Citizens) filed a Petition to Intervene.

On November 9, 2006, Joint Applicants filed an Answer to the Preliminary Objections of CWA.

On November 8, 2006, a Notice of Prehearing Conference was issued which set the prehearing conference for November 29, 2006 in Harrisburg.

On November 10, 2006, Joint Applicants filed Preliminary Objections to Dismiss Portions of the Protest and to Limit Participation of the CWA, and joined by Citizens, a separate set of Preliminary Objections to dismiss Protests and Petitions to Intervene of Blue Ridge, Sprint, BCAP and RCN.

On November 13, 2006, I issued a prehearing order which set forth some of the procedural requirements of a hearing before the Commission and required the parties to submit a prehearing memoranda in accordance with the regulations.

On November 20, 2006, CWA, Blue Ridge, Sprint, BCAP and RCN filed Answers to the Joint Applicants' Preliminary Objections.

On November 20, 2006, the Joint Applicants filed letters indicating that they did not oppose the participation of the OCA, OSBA and OTS.

All parties of record filed Prehearing Memos and the following were represented at the prehearing conference: for Joint Applicants, Norman J. Kennard, Esq.; for OSBA, Steven Gray, Esq., and Lauren Lepkoski, Esq.; for OCA, Shaun Sparks, Esq. and Joel Cheskis, Esq.; for OTS, Robert V. Eckenrod, Esq.; for Citizens, Lillian S. Harris, Esq.; for BCAP and Blue Ridge,

Pamela Polacek, Esq.; for CWA, Scott J. Rubin, Esq.; for Sprint, Jennifer Duane, Esq., and for RCN, John F. Povilaitis, Esq., and Matthew A. Totino, Esq.

A separate Order has been issued which sets a litigation schedule for the parties to follow, and disposes of uncontested motions. Another Order has been issued to dispose of the Preliminary Objections of the Joint Applicants to Limit Participation of the Communications Workers of America. A third Order addresses the Preliminary Objections of the Joint Applicants and Citizens to Dismiss Protests and Petitions to Intervene of Blue Ridge Digital Phone Company, Sprint Communications Company LP and RCN Telecom Services, Inc. This Initial Decision grants the Preliminary Objections of the Joint Applicants to the Protests and Petitions to Intervene filed by the Broadband Cable Association of Pennsylvania (BCAP) and the RCN Corporation.

#### FINDINGS OF FACT

1. Joint Applicants are Commonwealth Telephone Company, CTSI, LLC, and CTE Telecom, LLC d/b/a Commonwealth Long Distance Company.

2. On September 29, 2006, Commonwealth Telephone Company, CTSI, LLC, and CTE Telecom, LLC d/b/a Commonwealth Long Distance (Commonwealth or Joint Applicants) filed an Application for approvals necessary under the Public Utility Code for the Joint Applicants' parent company, Commonwealth Telephone Enterprises, Inc., to be acquired by Citizens Communications Company (Application).

3. The Application was published in the Pennsylvania Bulletin October 14, 2006, 36 Pa. B. 6355, with a protest due date of October 30, 2006.

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11. On November 13, 2006, I issued a prehearing order which set forth some of the procedural requirements of a hearing before the Commission and required the parties to submit a prehearing memoranda in accordance with the regulations.

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## DISCUSSION

Joint Applicants and Citizens filed Preliminary Objections seeking to dismiss the petitions to intervene and protests of five entities: Blue Ridge, Sprint, BCAP, RCN Telecom Services, Inc. and RCN Corporation. The Preliminary Objections are denied by a separate Order regarding Blue Ridge, Sprint and RCN Telecom Services, Inc. This Initial Decision grants the Preliminary Objections against BCAP and RCN Corporation and denies their Petitions to Intervene and Protests.

Parties may file preliminary objections:

### **§ 5.101. Preliminary objections.**

(a) *Grounds.* Preliminary objections are available to parties and may be filed in response to a pleading except motions and prior preliminary objections. Preliminary objections must be accompanied by a notice to plead, must state specifically the legal and factual grounds relied upon and be limited to the following:

- (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
- (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
- (3) Insufficient specificity of a pleading.
- (4) Legal insufficiency of a pleading.
- (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.
- (6) Pendency of a prior proceeding or agreement for alternative dispute resolution.

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In deciding the preliminary objections, the Commission must determine whether, based on well-pleaded factual averments of the Petitioners, recovery or relief is possible. *Dept. of Auditor General, et al v. SERS, et al.*, 836 A.2d 1053, 1064 (Pa. Cmwlth. 2003), 2003 Pa. Commw. LEXIS 849; *P.J.S. v. Pa. State Ethics Comm'n*, 669 A.2d 1105 (Pa. Cmwlth. 1996) 1996 Pa. Commw. LEXIS 11. Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. *Boyd v. Ward*, 802 A.2d 705 (Pa. Cmwlth. 2002) 2002 Pa. Commw. LEXIS 580. All of the non-moving party's averments in the complaint must

be viewed as true for purposes of deciding the preliminary objections, and only those facts specifically admitted may be considered against the non-moving party. *Ridge v. State Employees' Retirement Board*, 690 A.2d 1312 (Pa. Cmwlth. 1997) 1997 Pa. Commw. LEXIS 148.

In order to have standing, a party must have an interest which is substantial, direct, and immediate:

A "substantial" interest is an interest in the outcome of the litigation which surpasses the common interest in procuring obedience to the law. A "direct" interest requires a showing that the matter complained of caused harm to the party's interest. An "immediate interest involves the nature of the causal connection between the action complained of and the injury to the party challenging it and is shown where the interest the party seeks to protect is within the zone of interest sought to be protected by the statutes or the constitutional guarantee in question. *George v. Pa. Publ. Util. Comm'n*, 735 A.2d 1282, 1286 (Pa. Cmwlth. Ct. 1999).

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<sup>3</sup> *Pennsylvania Petroleum Association v. Pennsylvania Power & Light Company*, 377 A.2d 1279 (Pa. Cmwlth. Ct. 1977), *aff'd* 488 Pa. 308, 412 A.2d 522 (1990)(*Pa. Petroleum Association*).

currently regulated. Therefore, the association cannot have standing either in its own right or on behalf of the members in a proceeding before this Commission to determine whether to approve the acquisition of the Joint Applicants' stock by Citizens Communications Company.

Accordingly, the Petition to Intervene of the Broadband Cable Association of Pennsylvania will be denied, and its Protest dismissed for lack of standing.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objection of Commonwealth Telephone Company, CTSI, LLC, and CTE Telecom, LLC d/b/a Commonwealth Long Distance Company and Citizens Communications Company to Dismiss Protest and Petition to Intervene of the Broadband Cable Association of Pennsylvania is granted.

2. That the Petition to Intervene and Protest of the Broadband Cable Association of Pennsylvania are dismissed.

3. That the Preliminary Objection of Commonwealth Telephone Company, CTSI, LLC, and CTE Telecom, LLC d/b/a Commonwealth Long Distance Company and Citizens Communications Company to Dismiss Protest and Petition to Intervene of the RCN Corporation is granted.

4. That the Protest and Petition to Intervene of RCN Corporation are dismissed.

Dated: December 14, 2006

\_\_\_\_\_  
Susan D. Colwell  
Administrative Law Judge

A-310800F0010, A-311095F0005, A-311225F0003 JOINT APPLICATION OF COMMONWEALTH TELEPHONE COMPANY, CTSI, LLC AND CTE TELECOM, LLC D/B/A COMMONWEALTH LONG DISTANCE COMPANY FOR ALL APPROVALS UNDER THE PUBLIC UTILITY CODE FOR THE ACQUISITION BY CITIZENS COMMUNICATIONS COMPANY OF ALL OF THE STOCK OF THE JOINT APPLICANTS' CORPORATE PARENT, COMMONWEALTH TELEPHONE ENTERPRISES, INC.

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300 NORTH SECOND STREET  
HARRISBURG PA 17101

SCOTT RUBIN ESQUIRE  
3 LOST CREEK DRIVE  
SELINGROVE PA 17870

ACKNOWLEDGEMENT OF RECEIPT & ACCEPTANCE OF SERVICE

AND NOW, to wit, this 31 day of January, 2007,

the undersigned, as evidenced by execution hereof, acknowledges receipt, and accepts service of a Recommended Decision, an official Commission document entered, issued, or otherwise promulgated under date of January 31, 2007 at Docket No. A-310800 et al on behalf of:

JOHNNIE E SIMMS ESQUIRE  
ROBERT ECKENROD ESQUIRE  
PA PUBLIC UTILITY COMMISSION  
OFFICE OF TRIAL STAFF  
PO BOX 3265  
HARRISBURG PA 17105

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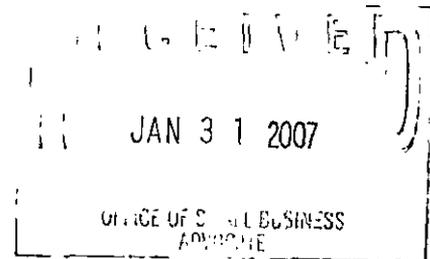
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LAUREN M LEPKOSKI ESQUIRE  
OFFICE OF SMALL BUSINESS ADVOCATE  
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Harrisburg, PA 17105-3265

ACKNOWLEDGEMENT OF RECEIPT & ACCEPTANCE OF SERVICE

AND NOW, to wit, this 1<sup>st</sup> day of February, 2007,

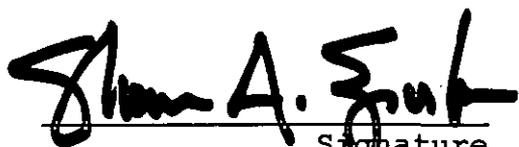
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